



MARRIAGE IN CRISIS: THE INDIVIDUAL AND THE STATE  
IN BELLE ÉPOQUE FRANCE

by  
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This thesis offers an analysis of the competing interests of the state and the individual in Belle Époque France as manifested in a crisis of marriage. I argue that traditional institutions that favored social stability were incompatible with a modern understanding of individual rights. My argument is centered on three issues: the abolition of the dowry, the legalization of divorce and the legitimization of free union. Conservatives considered familial stability to be a vital element of national security, thereby justifying extensive state interference in marriage practices. Liberals contended that the primary function of government was to guarantee individuals maximal freedom. These competing interests produced a climate of crisis that pitted two irreconcilable visions of marriage against one another.

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## CHAPTER I

### INTRODUCTION

In July of 1914, although France teetered toward war, public attention was fixed inward on the sensational murder trial of Henriette Caillaux. Joseph Caillaux, the husband of the accused, had served as Prime Minister and was the Minister of Finance until the scandal over the murder forced him to resign. The growing hostilities between Austria, Serbia, Germany and Russia were overshadowed by this sensational case that occupied the front pages of every newspaper.

Madame Caillaux had married her husband under morally questionable circumstances. Already married when she met Joseph, she became his mistress, then divorced her first husband in order to marry her lover. Joseph had married his first wife Berthe under virtually the same conditions, then abandoned her to marry Henriette. An extremely powerful man, Joseph had many enemies who capitalized on his adulterous courtship of Henriette by arguing his personal degeneracy made him a corrupt politician. This vicious smear campaign, led by Gaston Calmette, editor of *Le Figaro*, impugned the integrity of Joseph and publicly humiliated Henriette. In March 1914 Calmette violated custom by publishing compromising personal correspondence that illuminated both Joseph's adultery and his political duplicity. The day after the facsimile of the letter was



published, Henriette purchased a pistol, went to the offices of *Le Figaro* and shot Calmette in the stomach, killing him instantly.

Retrospectively, it seems astonishing that the French people were so utterly absorbed in a family scandal on the brink of a national catastrophe on an unprecedented scale. The trial represented the culmination of two decades of national furor over the state of marriage. Beginning with the Naquet law of 1884, which reinstated divorce, a heated debate over whether marriage as an institution was failing erupted between proponents of traditional indissoluble marriage and advocates of more progressive visions of marriage.

Although conservative and progressive thinkers differed in their visions of modern family life, they universally perceived the institution of marriage to be in crisis. To conservatives, the trial seemed to be evidence of the “evil ferments introduced into our mores by divorce.”<sup>1</sup> Madame Caillaux was to them an adulteress whose outrageous unfeminine actions were symptomatic of the dangerous consequences of becoming a “New Woman.” For conservatives, the trial provided sensational evidence that the moral relativism of the republic was leading to national degeneracy and the destruction of the family.

To progressive thinkers, particularly left-wing feminists, the crime of Madame Caillaux sprang not from the depravity of her soul, as conservatives claimed, but from a profound political ignorance and an inability to communicate openly with her husband. Had she not been excluded from public life, even the most rudimentary political sense

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<sup>1</sup> *Annales Politiques et Littéraires* (29 March 1914), cited in Edward Berenson, *The Trial of Madame Caillaux*, (Berkeley: University of California Press, 1992) 150.

would have prevented her from taking such drastic action.<sup>2</sup> Furthermore, if she had enjoyed a companionate marriage with her husband she would have been able to express her anxieties and intentions frankly, and he would in turn have taken her seriously. The murder, according to progressive thinkers, was not evidence of the consequences of divorce, adultery and the destruction of the traditional family. Rather, it served to illustrate that when women attempted to embody the traditional wifely ideal, the result was dangerous ignorance and powerlessness for the wife, and a relationship without communication for both partners. To progressive thinkers, therefore, the trial illustrated how desperately the institutions of marriage and the family needed to be reformed in order to avoid disaster. When understood as the culmination of twenty years of intense debate, the absorption of the French people in the outcome of the trial at the expense of international affairs becomes more comprehensible.

Participants in the debate over marriage perceived the institution to be in crisis, and believed the family to be besieged by destructive forces as never before. In fact, there is little evidence to suggest that there was more spousal dissatisfaction or a greater frequency of adultery than at any other time. While the rate of divorce increased after the legalization of marital dissolution, this cannot be taken as a measure of a sudden deterioration in the quality of marriages. Undoubtedly there were many unhappy marriages in France prior to 1884, which would have been dissolved had divorce been legal. The term “crisis of marriage” refers therefore to the atmosphere of crisis and the contemporary perception of institutional failure that characterized the debate, rather than to an actual crisis.

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<sup>2</sup> Berenson, 123.

With the overall quality of marriages unaltered, the panic of many French pundits over the destruction of the institution could be understood as a subset of other concurrent crises. The humiliating defeat administered by the Germans in 1871 has been well documented as a source of insecurity and fear of national degeneration for the French.<sup>3</sup> As the Franco-Prussian war dealt a severe blow to French masculinity, the feminist movement began to gain momentum. Many conservatives saw the “New Woman” as a threat to social stability and feared the institutional changes proposed by feminists would further weaken the state. This crisis of gender related to the changing roles of husband and wife discussed by participants to the marriage debate. Demographers and demagogues were frantic that the birthrate, sluggish by comparison to neighboring countries, was a sign of national decay and would put France at risk for further military defeat. They were primarily interested in improving the birthrate through the production of legitimate children in established marriages, and did not see the growing numbers of unwed mothers as a positive sign for the population.<sup>4</sup> As a result, demographers believed marriages were failing because legitimate unions were not producing many offspring. Finally, though not directly related to marriage, the Dreyfus affair served to politicize and polarize the French people, leading many who were formerly indifferent to public affairs to take a political stand.<sup>5</sup> This atmosphere of divisiveness, combined with the fears of

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<sup>3</sup> See Wolfgang Schivelbusch, *The Culture of Defeat: On National Trauma, Mourning, and Recovery* (New York: Metropolitan Books, 2003).

<sup>4</sup> See Jacques Bertillon, *Le problème de la depopulation*, (Paris: A. Colin, 1897); P. C. *Un Cri d'Alarme! A tous les pères de famille français*, (Paris: Delhomme et Briguet, 1885).

<sup>5</sup> See Robert L. Hoffman, *More Than a Trial: The Struggle Over Captain Dreyfus*, (New York: Collier Macmillan, 1980); Robert Tombs, *France 1814-1914* (New York: Longman, 1996) 462-468.

national insecurity caused by the affair further exacerbated the climate of crisis that produced the debate over marriage.

The crisis of marriage, although sparked by the debate over legalizing divorce and fueled by an atmosphere of anxiety, should be understood as part of the long-term progression toward modern marriage in France rather than as a sudden eruption caused by the malaise of the Belle Époque. Participants consciously engaged in the debate by evoking the language of Enlightenment thinkers and agitators of the Revolutionary period. The marriage debate should therefore be understood as a continuation of a two century-old discourse about the happiness of individuals and the purpose of marriage discussed in depth by James Traer in *Marriage and the Family in Eighteenth-Century France*.

The *philosophes* of the Enlightenment envisioned marriage as an opportunity for spouses to find self-fulfillment. They argued that happiness in marriage was most likely to be achieved through freedom of choice, mutual affection and the freedom to dissolve an unhappy union. These ideals might have remained the theories of the intelligentsia had not the dramatic reforms of the Revolution enshrined them in law. The legalization of divorce in 1792, equality of spouses and equal inheritance among children created an opportunity for a national experiment with modern marriage. Although change in practices was slow in coming and divorce was eliminated in 1816, the Revolution put the discourse of the Enlightenment about marriage into action.<sup>6</sup>

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<sup>6</sup> James F. Traer, *Marriage and the Family in Eighteenth-Century France*, (Ithaca and London: Cornell University Press, 1980): 16-21.

The Civil Code, created in 1804, eliminated the possibility of equality in marriage by rendering the wife subordinate in all things to her husband. The retrograde legislation of 1816 likewise halted the implementation of the Enlightenment vision of marriage. Despite these legal setbacks, the Romantic movement perpetuated the ideal of marriages based on affection. Over the course of the nineteenth century, the expectation that emotional and physical needs be met within marriage grew. Husbands sought not only passive submission but also the consent and affection from their wives. The increasing value of intimacy between spouses can be seen by the growing prevalence of sleeping together in double beds, as the wisdom of keeping separate chambers was rejected.<sup>7</sup> On the whole, the nineteenth century, though lacking the dramatic upheaval of the Revolution, saw significant changes in attitudes toward marriage. By the end of the century, companionate marriage was widely seen as a fundamental right, rather than a distant ideal proposed by unrealistic philosophers.

Jacques Dupâquier argued in his *Histoire de la population française* that the reinstitution of divorce was more in the spirit of the reforms of 1804, which made divorce a penalty inflicted on the unfaithful rather than a reinstatement the liberal vision of the early revolution.<sup>8</sup> While the Naquet law was more limited than the Revolutionary vision, it was intended to be and was understood by contemporaries as a release rather than a punishment. I argue that the marriage debate of the Belle Époque, including the controversy over divorce, was not a reactionary development at the end of a staid

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<sup>7</sup> Michelle Perrot and Anne Martin-Fugier, "The Actors," in *A History of Private Life: From the Fires of Revolution to the Great War*, vol. 4 (Cambridge and London: Belknap Press, 1990): 186, 321.

<sup>8</sup> Jacques Dupâquier, *Histoire de la population française*, vol. 3 (Paris: Presses universitaires de France, 1988): 430.

domestic century, but a continuation of the eighteenth century movement toward modern marriage as discussed by Traer. The strongest evidence for this is the fact that both conservative and progressive commentators argued from the perspective that companionate marriage ought to be the norm. Although conservatives argued for a return to traditional marriage, what they meant by that term was a companionate, indissoluble union that was, ideally, fruitful. They did not mean a return to marriages arranged solely with the financial and social interests of the families in mind, without reference to the sentiment of the spouses. Their idea of traditional marriage was in fact very much in harmony with Enlightenment and Revolutionary ideals, with the exception of the issue of divorce. Rather than hearkening back to a reactionary period in a time of crisis, the pundits of the marriage debate were part of a two-century movement toward modern marriage.

The crisis of marriage played a significant role in the public discourse of the Belle Époque and was also an important component of the history of the family in Europe, but it has been all but disregarded by historians. One explanation for this oversight is the close relationship of the crisis to many of the larger and seemingly more momentous crises of the Belle Époque. As a result, the historians who have treated the topic typically did so from the perspective of these separate crises. The marriage debate overlapped with contemporary discourse about the role of women and their relationships with men. Statements by Madeleine Pelletier, Hubertine Auclert and Nelly Roussel, among others, about the deplorable state of modern marriage have therefore been treated as part of the

feminist cause rather than a contribution to the debate about marriage.<sup>9</sup> Historians of the demographic crisis have likewise regarded public discourse about the deterioration of marriage as a response to concern about the falling birthrate.<sup>10</sup> One of the principal contributions of this thesis is therefore to discuss the crisis of marriage on its own terms, as a phenomenon related to but distinct from concurrent crises.

At the center of the marriage debate was the question of legal reform to enable companionate marriages to be contracted. Most participants to the debate agreed that affection in marriage was a moral and social good, but they disagreed over how important companionate marriage was relative to other social and national considerations. To conservative thinkers, the happiness of individuals could not be allowed to supersede considerations of national security and social continuity. For that reason, they typically resisted drastic legal reform and sought means to encourage loving marriages within the existing system, recommending comparatively small alterations to the legal code. By contrast, progressive thinkers such as feminists, neo-Malthusianists and liberal politicians believed that guaranteeing the freedom and happiness of individuals was the most important function of the law. They understood the existing laws to be an impediment to individual fulfillment and argued for more drastic reforms than did their conservative counterparts.

Much of the debate over marriage was carried out in newspaper surveys, the editors of which generally divided the discussion into three questions: What is your

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<sup>9</sup> Elinor A. Accampo, "Private Life, Public Image: Motherhood and Militancy in the Self-Construction of Nelly Roussel, 1900-1922" in *The New Biography: Performing Femininity in Nineteenth-Century France*, (Berkeley: University of California Press, 2000).

<sup>10</sup> See Joshua Cole, *The Power of Large Numbers*, (New York: Cornell University Press, 2000): 194-196.

opinion of marriage as it is practiced at this time, what reforms seem most urgent and easily realized and what consequences do you foresee from the coming of free union?<sup>11</sup> Most respondents felt that reforming dowry practices and the divorce laws were the most urgent changes needed. Free union was by far the most divisive issue, with most people either strongly in favor or profoundly opposed to the practice.

This thesis will follow the central points of the debate, beginning with the dowry, then treating divorce and free union. My choice of these three issues was largely dictated by what concerned the French at the time the most, but they were hardly arbitrarily chosen or unrelated topics, even at the time. The entire debate, though ostensibly about marriage, truly centered on the rights and freedoms individuals ought to enjoy. The dowry was seen as a relic of the *ancien régime* that denied spouses the opportunity to choose their partner freely. Progressive thinkers saw divorce, a right originally granted in the revolution, as the logical extension of abolishing the dowry. If marriages should be freely contracted, they should be freely dissolved. Any attempt to force unwilling couples to wed or unhappy couples to stay together was contrary to the natural right to freedom that all citizens should enjoy. Free Union was a bold proposition that all the fetters of matrimony ought to be done away, that individuals would be able to contract and dissolve unions unhampered by legal formalities or the interference of external parties. The unifying element of the marriage debate was therefore the freedom of individuals to contract and maintain unions based on love as the surest guarantor of their personal happiness.

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<sup>11</sup> See "Enquête sur le mariage," part 1, *La Plume: Revue Littéraire et artistique bi-mensuelle*, 288 (1901): 235; John Grand-Carteret, *Les trois formes de l'Union sexuelle à travers les âges: Mariage, Collage, Chinnerie*, (Paris: Albert Méricant, 1911).



## CHAPTER II

### THE DOWRY: PAYING THE PRICE OF MARRIAGE

The custom of providing French brides with a dowry existed long before it was incorporated into the Napoleonic Code in 1804. The practice was so widespread that few women married without one and some claimed that an “old maid” was synonymous with a woman who had never had a dowry.<sup>12</sup> However, as the centennial of the civil code approached, the dowry increasingly became the subject of public debate. Although pundits across the political spectrum criticized the dowry, proposals for dowry reform may be broadly categorized in the opposing camps of conservatives and a conglomerate of progressive thinkers including feminists, liberal politicians and radical intellectuals. The conservative group consisted of right-wing politicians, traditional Catholics and sundry traditionalist thinkers who found the moral and social climate of the Belle Époque objectionable. They typically upheld the Civil Code and opposed measures to grant individuals greater freedom at the expense of state power. Progressive thinkers typically prized the happiness and freedom of the individual over legislative continuity.

The power of tradition, from the conservative perspective, was reason enough to pause before drastically amending the dowry laws. The dowry influenced not only the wedding preparations but also the financial relationship of the husband and wife for the remainder of their lives. To tamper with the dowry therefore necessitated meddling with

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<sup>12</sup> Fullerton, 901.

the structure of marriage itself, which conservatives were reluctant to do. The concurrent demographic crisis, which many felt to be related to the crisis of marriage, was sufficiently alarming that conservatives preferred to strengthen existing institutions rather than pursue drastic reforms. Therefore, although conservatives recognized many of the flaws of the dowry system, they resisted attempts to abolish it entirely.

Liberal politicians, along with socialists and feminists, objected more volubly to the dowry as an antiquated custom that prevented institutional progress. Many feminists saw the dowry as an obstacle to gender equality, a tradition that subjugated and demeaned women. According to the vision of these progressive ideologues, modern marriage should be a companionate union, free of state interference. More concerned with the actualization of individual freedoms than the continuity of institutions, they advocated reforms to the legal system that would remove the apparatus of state interference and improve individual marriages.

### *The Economy of the Dowry*

Before engaging in a discussion of how dowries affected the marriage debate it would be useful to explore the essentials of the dowry laws. From a legal standpoint, marriages were treated primarily as an economic transaction that centered on the bride's dowry. The settlement was understood to be a compensation for a woman's loss of rights to family land and wealth as well as a financial endowment that gave her claim to a portion of her new family's assets.<sup>13</sup> The material interests of both families were

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<sup>13</sup> Weber, *Peasants into Frenchmen*, 170.

therefore at stake; a bride's dowry represented her share of the patrimony, leaving her father's remaining property to be divided amongst his sons, while simultaneously securing her right to partake in her new family's substance.

The difference between brokering a marriage for a daughter or a son was a telling testament to the competing interests of the parties involved. One journalist claimed "the very mother who most longs for a disinterested son-in-law takes every precaution lest her own son fall a victim to a love-match in which the marriage contract has not previously been arranged between the two families."<sup>14</sup> The dowry represented a daughter's share of the inheritance, but in the case of indigent families or even in more prosperous situations, a girl's settlement could easily be sacrificed that the life position of a son might be assured.<sup>15</sup> Families preferred to provide daughters with the smallest possible dowry; all money bequeathed to daughters was an investment lost to the gain of the husband's family.<sup>16</sup>

After the families agreed on the marriage, a period of engagement followed, the duration of which might vary. In all cases where a dowry was involved the couple was required by law to meet with a notary prior to finalizing the union. In this preliminary meeting, the notary collected the birth certificates and statements of parental consent

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<sup>14</sup> Fullerton, 901.

<sup>15</sup> Stoddard Dewey, "The Depopulation of France," *Public Opinion* 21 (1896): 857.; see Paul and Victor Margueritte, *Femmes Nouvelles*, (Paris: E. Plon, Nourrit et Cie, 1899) 44. The central character, Hélène is deprived of her dowry from her parents in favor of her brother on the grounds that he could put it to better use as a source of live capital. She is bullied into assenting on the grounds that despite her pretensions at liberation her loyalty to her family interests is too great for her to demand her inheritance.

<sup>16</sup> For a biting critique of bourgeois avarice in negotiation marriage settlements, see Eugène Brieux, *The Three Daughters of Mr. Dupont*, trans. St. John Hankin in *Three Plays by Brieux, Member of the French Academy*. 4<sup>th</sup> ed. (New York: Bretano's, 1912).

from the parties involved in order to issue a license. The notary additionally enquired as to the system of marriage under which the couple intended to marry, which he recorded on unstamped paper along with his signature. This paper was then delivered to the officer of civil status prior to the celebration of the marriage.<sup>17</sup> Once the bride and groom were married the stipulations of the contract could not be altered nor could the sum of the dowry change. The groom could not demand a larger sum, nor could a father with changing financial circumstances back out of the agreement.

There were three systems or “regimes” of marriage under which a couple might marry: the system of separation of goods, the dotal regime and the communal regime. A marriage manual for young girls called *La jeune ménagère* explained the differences between these three in a simplified, though biased way. The manual was written in the form of a didactic novel, with the relevant chapter cast as a scene in which the wise and condescending fiancé Pierre explained to his ingénue bride-to-be Marie the reason for meeting with the notary.

The system of separation of goods, explained Pierre, was “good for those who want to shelter their personal property from the more or less hazardous speculations of their spouse.”<sup>18</sup> Of the three, this system was the least carefully legislated. If the marriage contract stipulated a separation of property, then the wife retained the entire

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<sup>17</sup> Henry Cachard France, *The French Civil Code: With the Various Amendments Thereto, as in Force on March 15, 1895*, §70-73, 1394 (London: Stevens and Sons, 1895) 23, 318. The term “officer of civil status” referred to the functionary responsible for performing the civil marriage, for instance the mayor.

<sup>18</sup> Julie Sévrette, *La jeune ménagère: soins domestiques, cuisine, travaux à l’aiguille, notions de droit usuel, hygiène et médecine élémentaire, jardinage etc.* 2<sup>nd</sup> ed. (Paris: Larousse, 1905) 233.

management of her personal property, real estate and income.<sup>19</sup> If the couple did not agree on the dotal or communal regime and also did not specify a separation of goods, by default the husband managed the property and real estate of the wife, while retaining the income for household expenses.<sup>20</sup> A woman could not sell her property without her husband's consent, or if he refused, the permission of the Court.<sup>21</sup> Separation of property, of the three arrangements, granted the greatest freedom to women but also seems to have been chosen infrequently as the official arrangement.<sup>22</sup> In this system a woman retained full property rights to everything that she brought to the marriage. Although her husband could forbid her to sell her property, the goods did not belong to him and she could theoretically override his will with a court order.

In *La jeune ménagère*, Pierre leadingly asked his fiancée "Would you like, at the very least, to secure your dowry and establish before the notary that neither you nor I can subtract from it or sell part of it? In other words, do you prefer the dotal regime?"<sup>23</sup> Marie hastened to reassure her beloved that she had every confidence in him and trusted him. The implication of the author was clear; any effort to limit the power of the husband represented a lack of trust between the two parties. In fact, however, the husband retained sole management of the property during marriage. Adopting the dotal regime did

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<sup>19</sup> Cachard, *French Civil Code*, §1536, 354.

<sup>20</sup> Cachard, *French Civil Code* §1530-1531, 353.

<sup>21</sup> Cachard, *French Civil Code*, §1535, 354.

<sup>22</sup> The brevity of the legislation and infrequent references in literature both suggest that few couples adopted this course of action. It is entirely possible that couples legally belonged to a different system while in practice allowing the wife the freedom of the system of separation.

<sup>23</sup> Sévrette, *La jeune ménagère*, 233.

not protect the wife any more than another system. The essential feature of the dotal regime was therefore to safeguard property, especially real estate, for the long-term interests of the larger family. The wife had the right to protect her dowry by applying separation of property should her husband seek to utilize it unlawfully, but the purpose of the regime was to assure the inalienability of property, that it be conveyed in its entirety to future generations or be returned to the wife in the case of separation.<sup>24</sup> Under this system the dowry remained the property of the couple in trust. Neither person could dispose of the property, although it was possible to borrow temporarily from the principal. The dowry was a means of ensuring the investment would remain in the bride's extended family by preventing the husband from spending his children's inheritance.

The final system, community of property, specified that the couple hold all goods in common, and be equally liable for debts. Pierre and Marie agreed to this system as evidence of her trust in his work ethic and his trust in her household management skills. Pierre declared "all things will be common between us, including the joys, isn't that so Marie?" to which she replied "Yes, Pierre, the joys and the sorrows."<sup>25</sup> While it implied a sense of mutuality, in legal fact community of property limited the freedom of the wife still more than the other two systems. The husband was the sole manager and could sell, convey and mortgage all property without his wife's cooperation or consent.<sup>26</sup> The acts

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<sup>24</sup> Cachard, *French Civil Code*, §1540-1581, 355-363.

<sup>25</sup> Sévrette, *La jeune ménagère* 234.

<sup>26</sup> Cachard, *French Civil Code*, §1421, 326.

of the wife, by contrast, did not affect community property, nor could she bind herself or the property without court authorization.<sup>27</sup> The husband's control over community property extended to the individual property of the wife without reference to her consent, with the sole exception of her real estate.<sup>28</sup> In sum, the system of community rendered all property nominally common but placed it under the sole control of the husband, including the dowry. The wife, though technically joint owner of all property, in fact retained no rights as to the disposal or use of the property during marriage.<sup>29</sup> This system, by far the most commonly used, was also the most condemned by critics of the dowry.

All three systems presupposed that the bride would bring some form of property as a dowry to the marriage. The regime chosen was not necessarily a decision made solely by the engaged couple, despite the story of Pierre and Marie. The dotal regime safeguarded the investment of the bride's parents should the marriage fail and ensured that family property be passed in its entirety to grandchildren, as well as providing for her as a widow should her husband predecease her. A family in straightened circumstances could benefit from a child marrying under community of property whose enlarged income could indirectly bolster the fortunes of impecunious relatives. Thus there were many interests at play in negotiating a marriage contract, most of which left the emotional compatibility of the couple outside the transaction. In signing the contract, the bride and groom designated which system they would use, and the bride's parents

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<sup>27</sup> Cachard, *French Civil Code*, §1426, 327. The acts of the wife did affect community property if she acted as a public trader, but in no other capacity.

<sup>28</sup> Cachard, *French Civil Code*, §1428 (London: Stevens and Sons, 1895) 327.

<sup>29</sup> Jules Simon, *La femme du vingtieme siecle*, (Paris: Calmann-Lévy, 1892) 69-70.

specified who would be responsible for paying what portion of the dowry. The marriage system of the parents determined whether the source of the dowry would be from the father's fortune alone or also from the dowry the mother had brought to her marriage. If the parents married under the regime of community property, the dowry would come from the community. If, however, the parents were bound by separation of goods they would need to specify how much of the dowry would come each parent. Although ultimately the couple alone signed the contract designating their system of marriage, parents could utilize the dowry as leverage, significantly affecting what system the couple chose.

The dispensation of the bride price was central to all three regimes, as all contracts served primarily to dictate who would control the bride's dowry. Thus in the broadest sense the dowry debate encompassed all three systems. The rigid legal definitions of marital relationships informed contemporary understanding of what traditional marriage was. Men were empowered to control and direct their families while women were subordinated but at least theoretically protected. That all three possible marital structures centered on the dowry is revealing, in that neither French law nor society imagined a nuptial arrangement without it. Proposals to amend or abrogate the dowry laws therefore jeopardized both marital and social stability, necessitating a comprehensive reimagination of the nature of conjugal relationships.

Although all three regimes were based on the dowry, for the purposes of this discussion only community of property need come under careful consideration. Seen as the most limiting and unjust regime, it became the locus of criticism for detractors of



traditional marriage. Many critics used the terms community and dowry interchangeably, in part because communal property was by far the most frequently used system.

### *Critiques of the Dowry System*

In response to a survey about the state of marriage, the anarchist Jean Grave wrote, “the most urgent reform would be that the individuals acquire enough of a conscience themselves and the dignity to know not to allow the interference in the social organization in their intimate life.”<sup>30</sup> One of the primary concerns about the dowry was the interference it mandated of a public representative in the private sphere. The necessity of meeting with a notary prior to being married was seen by many, particularly political and social dissidents, as an intolerable interference of a public official into what ought to be a private agreement between two individuals, witnessed by their families.

The most vocal critics of the role of the notary were political extremists, notably socialists, anarchists and the artistic avant-garde. Saint-Pol-Roux, a symbolist poet and an early member of the modernist movement, argued that the presence of legally sanctioned officials in marriage ceremonies enabled government surveillance of the intimate life of French people. He claimed “the law pens the spouses in an alcove like in a block under surveillance, and it seems that a whole horde of men of the robe and the wig are bent over the nuptial couch, mayor, curate, notary – only the apothecary is

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<sup>30</sup> Jean Grave, “Enquête sur le mariage,” part 3, *La Plume: Revue Littéraire et artistique bi-mensuelle*, 291 (1901): 401.

missing, but he'll come – and to these people comes the right to direct the object.”<sup>31</sup> The notary, from the perspective of critics, was not merely a functionary executing a fairly simple assignment; he was also an agent of the legal system authorized to spy on and control the relationship between a husband and wife.<sup>32</sup>

Such objections underlined several aspects of the dowry system that subjected individuals to state-sponsored social supervision. A couple was required to register their relationship to one another under one of three categories. Furthermore, a couple had to decide how their relationship would be governed in most cases before they had cohabitated and often before they really knew one another. The three regimes functioned as a means for the court to standardize and control personal relationships.

In addition to promoting state surveillance, dowries were condemned for rendering love-based marriage impossible. With property as the centerpiece of contracting a marriage, critics argued, young people were taught greed and selfishness. One alarmist claimed, “cupidity and vanity corrupt and sully, at the very origin, in the founding act, a great number of households.”<sup>33</sup> To detractors, dowries were both a cause and a symptom of moral decay that rendered marital happiness unlikely if not impossible.<sup>34</sup>

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<sup>31</sup> Saint-Pol-Roux, “Enquête sur le mariage,” part 2, *La Plume: Revue Littéraire et artistique bi-mensuelle*, 289 (1901): 300.

<sup>32</sup> Urbain Gohier, “Enquête sur le mariage,” part 2, *La Plume: Revue Littéraire et artistique bi-mensuelle*, 289 (1901): 302.

<sup>33</sup> Paul Bureau, *La crise morale des temps nouveaux*, 5<sup>th</sup> ed. (Paris: Bloud, 1908) 48.

<sup>34</sup> Strong anti-Semitic feeling in France led to accusations that Jewish influence was partially responsible for inculcating the French with the spirit of avarice. The clear implication of that assertion was that the removal of Jewish influence would do a great deal to repair the moral corruption of the French. See Ch.

Some critics of dowries as a moral evil were conservative alarmists over the demographic crisis who placed the faltering birthrate at the center of the marriage debate. These anti-Malthusianists argued that individual selfishness in marriage was at the root of the population crisis, precipitating a national calamity. Couples who prized material comfort in selecting a mate, conservatives claimed, would continue to privilege financial security by voluntarily limiting their number of children. In families where the selfish employment of prophylactics was not an issue, it seemed likely to detractors of marriage that mutual dislike between marriage partners who had married for money would accomplish the same purpose of reducing the total offspring. To pro-natalist conservatives, individual selfishness put the well being of France at risk by causing a national crisis of population.

Pro-natalists found themselves trapped in a circular argument. According to them, individuals were at fault for giving way to moral corruption, thereby endangering the future of the state. Yet the root of individual decay, as they understood it, was a system mandated by the state that promoted greed. Who then, was at fault, the selfish individual or the morally bankrupt state system? This question was of fundamental importance, as the answer would determine the proper course of action. If the system were at fault, then the immediate solution would be to amend the legal code, whereas if individual morality were to blame, the first priority would be moral reform.

Education, argued moderates, would do more than legal reform to change the attitudes of young people. Some advocated better education “that the woman know what

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Bauchery and A. de Croze, *L'Evolution de l'amour* (Flammarion: 1892), in John Grand-Carteret, *Les trois formes de l'Union sexuelle à travers les ages: Mariage, Collage, Chinnerie*, (Paris: Albert Méricant, 1911) 272.

duties (her role as wife and mother) claim her in marriage” and that “the man have the sentiment of his responsibility regarding the woman, so youthful and unarmed in life.” With individuals adequately prepared for their roles in marriage, “useless formalities would fall of their own accord.”<sup>35</sup> This vision of education clearly called for a reemphasis on traditional gender roles, with the presumption that when the moral equilibrium was restored, laws would naturally reflect that balance.<sup>36</sup>

Feminists promulgated a conception of marriage that included companionate marriage based on spiritual, intellectual and emotional compatibility. Many feminists utilized romance novels as a means to present their vision of companionate marriage to a wide audience of women. Long dismissed as titillating trash, romance novels of the period provide a useful insight into the changing ideal of a sentimental relationship between a husband and wife. Novels were an effective means of sending a message to women about romantic relationships because they were read by women of all classes and were passed from reader to reader.<sup>37</sup>

One of the essential plot characteristics of feminist romances was individual control of the dowry. Paul and Victor Margueritte, co-authors of *Femmes Nouvelles*

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<sup>35</sup> Eugène Carrière, “Enquête sur le mariage,” part 1, *La Plume: Revue Littéraire et artistique bi-mensuelle*, 288 (1901): 236-237; see also George Fonsegrive *Mariage et Union Libre* (1909) in Grand-Carteret, *Trois formes*, 249; Séverine, *Gil Blas* (1905) in Grand-Carteret, *Trois formes*, 310.

<sup>36</sup> Examples of attempts to offer a new and improved education included Dr. Jaf and Saldo [Jean Fauconney], *Physiologie Secrète de l'Homme et de la Femme*, (Paris: E. Denans, 1908); Auguste de Morsier, *Droit des femmes et la morale intersexuelle, une question d'éducation sociale*, (Geneva: Kundig, 1903); see also Mary Lynn Stewart, *For health and beauty: physical culture for Frenchwomen, 1880s-1930s*, (Baltimore: Johns Hopkins University Press, 2001).

<sup>37</sup> Jennifer Waelti-Walters, *Feminist Novelists of the Belle Epoque: Love as a Lifestyle*, (Bloomington: Indiana University Press, 1990) 5; Diana Holmes, *Romance and Readership in Twentieth-Century France: Love Stories*, (Oxford: Oxford University Press, 2006) 10.



Tinayre's eponymous heroine has a close relationship with her uncle, while little mention is made of her deceased father.<sup>40</sup> In the novel, no explicit mention is ever made of Hellé's dowry, although after her uncle dies she is seemingly able to maintain her lifestyle. Hellé's endowment from her uncle was a thorough classical education, along with an enjoinder to be wise in her selection of her spouse. After a brief engagement to a domineering dilettante who lacks moral courage, Hellé marries Antoine. Although materially not a good catch, Antoine values her intelligence and encourages her to continue to learn. The implicit moral of the story was that mutual affection and respect were of more worth than wealth or consequence. A woman, according to Tinayre, should seek a husband who was first a friend regardless of his social standing.<sup>41</sup>

Romance novels almost always centered on a central female character, playing on themes such as courtship, love, and marriage in such a way that readers would have found them reassuringly familiar. None of them openly challenged the ideal of a loving relationship between a husband and wife, thereby escaping the censure and censorship of husbands. Rather, the novels offered a model of companionate marriage that would encourage women to become friends with their spouses as well as to assert their autonomy both in public and in private.

Although at no point did the authors call for the abolition of the dowry, it was equally clear that they understood the common usage of the dowry to be a barrier to the

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<sup>40</sup> Romance novels frequently featured heroines whose fathers were weak, absent or deceased. This created a climate of insecurity while simultaneously liberating the heroine to act for herself and overcome difficulties without assistance. Orphanhood additionally made the plight of the girl more pitiable and her triumph in securing a husband more satisfying.

<sup>41</sup> Marcelle Tinayre, *Hellé*, (1899: reprint Paris: Calmann Lévy 1931).

formation of a love-based union. Left-wing feminists averred that mutual respect could not be cultivated when one party had a financial stake in appearing to love the other. As one newspaper survey respondent wrote, “let us establish as a fundamental principal of marriage *absolute freedom of choice* of the contracting parties.” He further argued that once the bride is no longer given a dowry “she will be married for love, for herself, and not because she can bring pecuniary satisfaction.”<sup>42</sup> One essential feature of proposed institutional advances was the evolution of marriage toward an ideal of women being married for love. Liberals agreed that institution of the dowry as it existed at the time was fundamentally inimical to such progress.

Most romances ended with a wedding and honeymoon, leaving the reader with the cozy assumption that the joyful partnership forged in courtship would continue blissfully until death parted the happy couple. As the civil code made plain, however, the effects of the dowry-based systems of marriage continued to dictate the relationship between husband and wife long after the ceremony was a distant memory.

Feminists and other progressive groups were strident in their criticism of the demeaning consequences of the dowry on wives and mothers, claiming that marriage was failing because women were unjustly subjugated. To them, the ideal modern marriage would be a union of equals who shared at the very least mutual respect. The dowry laws limited the economic freedom of wives in such a way that women could never be understood as adults worthy of respect. For instance, only if a couple specifically requested separation of goods did the wife retain the right to manage her property. If the

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<sup>42</sup> Ch. Bauchery and A. de Croze, *L'Evolution de l'amour*, in Grand-Carteret, *Trois formes* 272.

couple did not specify a system or they chose the dotal or communal regimes the husband retained full management of the property. A wife could only assert control if authorized to do so by a court order, although it was the legal system that marginalized her in the first place so it seemed unlikely that a court would favor the emancipation of a woman. Legally, therefore, women were assumed to be unqualified to administer their property without the assistance of their husbands. Assumptions about the inferiority of women were enshrined in the Code and imposed on couples through the selection of marriage systems.<sup>43</sup>

Contemporary commentary cast the legal oppression of women in the baldest of terms. Nelly Roussel, a radical feminist who gave orations throughout France prior to the First World War, argued that the economic subjection of women was an insult to human dignity. The “odious articles of the Code that establish her civil inferiority and relegate her to the level of the insane, children and criminals” left a woman in a humiliating state of inferiority that put her at risk for abuse and subjugation.<sup>44</sup> Legally women had rights equivalent to minors, which made progress toward a marriage based on respect impossible. Whatever ideological headway feminists might make with the general population, it was argued, men would continue to treat their wives as incompetent dolls as long as women were legally children.<sup>45</sup>

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<sup>43</sup> Eugen Weber, *France, Fin de Siècle* (Cambridge: Harvard University Press, 1986) 92.

<sup>44</sup> Nelly Roussel, *L'éternelle Sacrifiée*, eds. Maïté Albistur, Daniel Armogathe (Paris: Syros, 1979) 41, 69.

<sup>45</sup> For more about the life and message of Nelly Roussel, see Elinor A. Accampo, “Private Life, Public Image: Motherhood and Militancy in the Self-Construction of Nelly Roussel, 1900-1922” in *The New Biography: Performing Femininity in Nineteenth-Century France*, (Berkeley: University of California Press, 2000) 222.; Elinor A. Accampo, *Blessed motherhood, bitter fruit: Nelly Roussel and the politics of female pain in Third Republic France*, (Baltimore: Johns Hopkins University Press, 2006).



The dowry needed to be abolished not only so that women could be chosen on the basis of personal merit but also so that, once married, wives could be treated as equals. The legal classification of women imposed by the Code was, to an ever-increasing degree, out of step with the widespread understanding of what marriage ought to be. The solution to the legal subjugation of women was to significantly alter or abolish the sections of the Code that authorized the state to interfere in the personal relationship between husband and wife.

The legal subjection of wives to their husbands placed women in a precarious sexual position, which many argued transformed marriage into legitimated prostitution. Frantz Jourdain, a contributor to newspaper surveys about marriage and an art nouveau architect, likened the parents to procurers who auctioned their daughters to the highest bidder, but he was still more repulsed by the manner in which the reality of marriage negotiations was disguised as respectable, even romantic. He found the paraded prostitution of marriage “with plumes, honored, garlanded, legal, cynical, proud, aggressive and insolent” to be far more pathetic than the clandestine prostitution of professional whores. He reversed the conventional moral hierarchy that placed intimacy legitimized by marriage above sex for money, stating “I feel full of pity for the submissive girl who, in order to gain her hard existence, sells her body to a rutting brute, but I have a revulsion for the respected bourgeoisie who sleeps every night with the husband she doesn’t love.”<sup>46</sup> In many of the debates about the role of the dowry in marriage, the state-sanctioned system was treated as though it existed separate from the

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<sup>46</sup> Frantz Jourdain, “Enquête sur le mariage,” part 5, *La Plume: Revue Littéraire et artistique bi-mensuelle*, 291 (1901): 572-573.

preferences of individuals. Jourdain decried this false dichotomy, pointing out that individual consent to participate in the system reinforced the power of the state. His implication was that women did not have to engage in marital hypocrisy, and the choice to sleep with a detested husband was the true moral evil. To him, women subjugated themselves by voluntarily taking part in a system that paralleled prostitution.

Not everyone agreed that women had an alternative to participation in sexual hypocrisy. Nelly Roussel equated the situation of a young bourgeoisie who gets married to the lot of “the worker who takes a lover because her meager salary will not allow her to live alone” and the unfortunate girl who “in order to eat each evening hooks in the street the first passer-by.” Like Jourdain, she likened marital sex to prostitution but her tone was markedly different. The hypocrisy of sex in marriage was, to her, not evidence of the moral corruption of women as individuals but of a pitiable social situation that left economically dependent women without a reasonable alternative. All three of her examples accomplished “about the same action, for which our laws and our mores almost inevitably condemn them: they give their bodies to a man in exchange for their daily bread.” From Roussel’s perspective, the legal system all but forced women into prostitution, leaving them little choice but to compromise morality.<sup>47</sup>

Significantly, both Jourdain and Roussel understood marital sex to be the moral equivalent of harlotry, they simply disagreed over who was to blame. Jourdain claimed that women consented to a system that subjugated them, but in reality they had few practical alternatives to traditional marriage. Roussel’s contention that the legal women

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<sup>47</sup> Roussel, *L’éternelle Sacrifiée*, 44.

had few options but to exchange sex for security is more convincing. The purpose of marriage was theoretically to provide protection and security for women, but in practice female happiness was secondary to the maintenance of the conventional family structure.<sup>48</sup>

### *Conclusion*

Few critics of the dowry system offered specific alternative plans for the organization of marriage. Although it seemed clear to both conservatives and progressive activists agreed that the dowry was an antiquated institution, the practice of providing a marriage settlement was so firmly entrenched in tradition and law that to alter it would constitute a significant social shift. Conservatives therefore tended to favor moral reform, an ambiguous agenda that centered on teaching young people to value character over money in selecting a marriage partner. This reeducation would begin with parents setting a good example and would also encompass youthful development of the intangible assets of a good work ethic, a love of order and amiability.<sup>49</sup> Liberal groups promoted measures that would reduce state interference in the private sphere and enable couples to dictate for themselves the dynamics of their relationships. Feminists advocated further that women be granted legal equality with men within marriage, especially concerning the distribution of property.

Though many critics called for the abolition of the dowry, what precisely that would mean in a legal or social sense was unclear. Perhaps all articles relating to

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<sup>48</sup> Marcel Prévost, *Le Journal* (1892), in Grand-Carteret, *Trois formes*, 343.

<sup>49</sup> Sévrette, *La jeune ménagère*, 132.

marriage settlements should be removed from the Code, or an alternative prenuptial system that promoted equality ought to take its place. The muddled visions of dowry reform were a product of the crisis mentality that prevailed at the time. The failure of the current system was universally apparent, but the solution to the problem was considerably less so.

Conservative and socially progressive groups both valued companionate marriage as the modern ideal for union, but they disagreed as to why the dowry prevented love-based marriages to flourish. Conservatives saw the ideal union as an affection-based marriage between individuals who filled traditional gender roles, but without the cupidity and irresponsibility the dowry engendered. The power of the state did not need to be weakened by amending the dowry laws, reform should occur from within society as individuals strove to repair slack moral standards. Progressive thinkers likewise envisioned marriage as a love-based alliance, but unlike conservatives they believed that only if spouses were completely free to choose their partner without reference to the dowry could that ideal be achieved. They saw the dowry as an insuperable barrier to companionate marriage because it enshrined in the Civil Code a set of actions unlikely to produce marital happiness. Marriage, according to liberal critics, empowered husbands in such a way that women could not be treated as equals, while placing the latter in economically straitened circumstances that required women to trade on their sexuality regardless of personal affection. To the progressive thinkers, the dowry laws should be drastically amended or abolished entirely, leaving individuals as free as possible.

Ultimately the two conceptions of dowry reform were irreconcilable. Conservatives prized marital stability as one of the key indicators of national security. Though aware that the dowry contributed to marital unhappiness, they were loath to risk changing so important an institution at a time when the family already seemed threatened.<sup>50</sup> Progressive activists chafed at the intrusion of public officials into domestic arrangements, and increasingly called for the liberation of individuals regardless of the cost to society. Lacking clear programs of reform or a realistic compromise between contending visions, dowry reform remained stymied in debate.

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<sup>50</sup> Jacques Bertillon, *Le problème de la depopulation*, (Paris: Colin, 1897) 33.

## CHAPTER III

### DIVORCE: THE MEANING OF A MARRIAGE CONTRACT

In 1884 the French Senate amended the Civil Code to reinstate divorce. Prior to the divorce amendments, unhappy couples had to be satisfied with separation of room and board, a system that allowed couples to live apart while the legal marital link remained until death. Proponents of the divorce amendments argued that the number of divorces would briefly spike as long-unhappy couples separated, but over the long run the number of divorces would diminish. They further argued that dissoluble marriage would result in fewer crimes of passion, less adultery and healthier marriages, thus definitively making divorce a social good rather than a symptom of social decay. There was, however, fierce opposition to the legalization of divorce on the part of conservative and Catholic groups. The latter were particularly vehement in condemning divorce as inconsistent with church doctrine, while conservatives deplored the casual attitude towards marriage they feared would follow the legalization of divorce. Divorce became legal on July 27, 1884, but the polarizing debate about its social efficacy continued.

The fundamental issue was whether marriage was a civil contract to be ruptured at will or a moral contract that bound families and society together. In the years following the passage of the amendment the number of divorces did rise, but contrary to prediction

the divorce rate did not drop off after an initial flurry of activity.<sup>51</sup> Conservatives felt that the new Code was a great deal too lenient, facilitating abuse of the system and hastening national moral decay. Liberal factions argued, by contrast, that the Code did not go far enough in promoting individual liberty. The mounting number of divorces was, to them, evidence that couples desired freedom and that divorces should therefore be more easily obtained. In order to understand the role divorce played in the marriage debate, it is necessary to consider the legal process of separation.

Although in some ways divorce offered greater freedom to the unhappily married, the narrow definition of grounds for divorce and the ability of the court to delay settlement effectively empowered the state to regulate individual relationships. Husbands and wives could sue for divorce on the grounds of adultery, “violence, cruelty, or gross insults on the part of one against the other,” or if the plaintiff’s spouse were condemned to “a degrading corporal punishment.”<sup>52</sup> Significantly, divorce by mutual consent or according to the will of one party was not possible. Once divorce proceedings were initiated the court froze communal assets and appointed an alternative domicile for the

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<sup>51</sup> Divorces were significantly more common in Paris than in France as a whole, which may have contributed to the perception of urban pundits that marriages were failing. For instance, between 1887 and 1905, one divorce was granted for every seventeen marriages in Paris, whereas in France as a whole there was one divorce for every forty-two marriages. The number of divorces granted did increase incrementally each year, but the ratio of divorces to marriages fluctuated by too great a margin to positively determine whether the rate of divorce was increasing or remaining constant. Statistical evidence did not support the conservative belief that marriages were failing at an exponential rate, but the figures were sufficiently elevated to fuel alarmist debate. Bureau of the Census, *Marriage and Divorce 1867-1906*, prepared by the Commerce and Labor Bureau (Washington, D.C., 1909) 437.

<sup>52</sup> Cachard, *French Civil Code*, §229-232, 62. *Peines afflictives et infamantes* has been translated as “a degrading corporal punishment” but could also be understood as “painful and defamatory penalties.” Usually employed for political criminals, this category included forced labor and deportation. Divorce might be an appealing option both because the spouse would be sent abroad and because of the stigma attached to criminality. See also Le Comte d’Haussonville, *Les établissements pénitentiaires en France et aux colonies* (Paris: Lévy Frères, 1875) 597-609.

wife, where she was bound to live. A wife who could not prove her residence was denied alimony, and if she were the plaintiff, her husband could demand that the proceedings be discontinued. This practice was seemingly intended to safeguard the chastity of the wife, ensuring that no illegitimate child would be conceived which the former husband might be obligated to support. The Tribunal could delay the divorce arbitrarily for cases other than corporal punishment of the spouse, in the hopes of effecting reconciliation.<sup>53</sup> Consequently, the power of the court over personal relationships remained firmly entrenched despite the apparent liberalization of the Code.

#### *A Moral Agreement*

The legalization of divorce constituted a state-sanctioned shift away from traditionalism in favor of individual rights, which conservatives took to be a serious threat to the welfare of France. Proponents of indissoluble marriage favored a return to the system that allowed only for legal separation but denied the possibility of ending marriage in divorce. They understood marriage to be a moral contract, the rupture of which reflected individual dissipation and hastened degeneration on a national level. Although a couple might legally divorce, conservatives argued that the reciprocal moral link would remain intact. The new divorce laws were objectionable because they treated marriage as an ordinary contract, absolving individuals of their moral responsibility to stay together for the good for the family and society. Conservatives claimed that divorce contributed to national degeneracy for three reasons: it produced a frivolous attitude toward commitment, it favored parental satisfaction over the security of children, and it

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<sup>53</sup>Cachard, *French Civil Code*, §234-251, 63-69.



undermined religious doctrine. Conservative campaigners hoped that a return to indissoluble marriage would compel couples to take their responsibilities seriously, reinforce family ties, and strengthen faith-based values.

The possibility of abrogating a union led conservatives to fear that marriage would no longer be taken seriously. Unattached individuals would not regard engagement or the wedding as a weighty matter to be considered carefully. Rather, they would make the commitment with the idea that if the union failed, divorce provided a convenient means to evade responsibility. Therefore, according to conservatives, divorce encouraged caprice, selfishness and an irresponsible attitude toward the good of society. Popular attitudes clearly needed adjustment, as prominent writer Marcel Prévost argued; “the important thing is to impose on the mob the idea of the *seriousness* of marriage. All contemporary tendencies toward the easiness of divorce stem from the fact that the word marriage is no longer understood.”<sup>54</sup> To conservatives, the word marriage signified an indissoluble union that created a family, as opposed to a simple alliance between two adults. Consequently, in their view the French needed to prioritize familial continuity and their obligation to society over personal satisfaction.

In addition to fears that divorce provoked carelessness in entering the married state, conservatives were concerned that divorce could have a negative effect on unions founded in good faith. The knowledge that a wife could find herself legally abandoned undermined the mutual trust requisite for a successful relationship; “it would be for homes a constant possible danger and would diminish the security and confidence

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<sup>54</sup> Marcel Prévost, *Le Journal* (1892), in Grand-Carteret, *Trois formes*, 343.

necessary for the harmony of the spouses.”<sup>55</sup> Open communication and trust were possible, according to conservatives, only when both partners enjoyed the emotional and financial security of indissoluble marriage. Insecurity, they argued, created a crisis atmosphere unnecessarily, contributing to the failure of marriages that might otherwise have been successful.

In addition to provoking tension and insecurity, some suggested, the possibility of divorce could give rise to neglect, assault or injury. The legal grounds for divorce excluded the possibility of mutual consent or single-party action. Therefore, if a husband or a wife really wanted a divorce, he or she would have to abuse their spouse, gravely insult them or commit adultery. Argued one pundit, “passion would find there a convenient means of satisfying itself; it would be easy to create causes which, in provoking divorce, would permit it to achieve its end.”<sup>56</sup> Extra-marital passion, the supposed reason why people would want to get divorced, was so overpowering that people would commit any outrage to be free again. Proponents of divorce claimed it would provide an escape for dissatisfied spouses, sparing the deserted the pain and indignity of infidelity and abuse. Conservatives argued that, far from reducing the frequency of spousal mistreatment, the state had provided an incentive for husbands to beat their wives and for wives to cuckold their husbands.

By transforming what was intended to be a permanent union into a transitory relationship, divorce was thought to encourage a negligent approach to a serious matter. Conservatives advocated a return to indissoluble marriage as a means of restoring

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<sup>55</sup> Raymond Janot, *Rôle de la femme dans la société contemporaine*, (Paris: Lecoffre, 1904) 34.

<sup>56</sup> Janot, 34; see also Alfred Naquet, *La loi du divorce*, (Paris: Fasquelle, 1903) 248.

national morality and encouraging marital responsibility. This rejuvenated moral approach to matrimony would primarily benefit families, safeguarding the home as a haven for the raising of children.

Sexual and moral regulation was of primary importance to conservatives because they perceived weakened families to be the source of national enfeeblement.<sup>57</sup> Georges Noblemaire, a conservative alarmist, was critical of what he felt were small interest groups, such as feminists or anarchists, who utilized the crisis of marriage as a platform to launch shortsighted reforms. He was assured that all “who have patriotic feelings and the instinct of social conservation” and who “want to keep the French family intact prefer the wise traditionalism of yesteryear.”<sup>58</sup> He explicitly linked national interest to support for indissoluble marriage, which by extension characterized proponents of divorce as enemies of France. Conservatives characterized divorce primarily as a conflict between individual interests and the sanctity of the family, the latter of which was treated as a microcosm of France. The home was considered the birthplace of the future mothers and soldiers of France, while also standing as a symbol of social stability and cultural continuity. Divorce threatened the interests of children by robbing them of a stable environment, simultaneously undermining the traditional social structure and complicating interpersonal relationships. The family was understood to be a metaphor for the nation; if families split apart and pursued individual interests at the expense of the unit, France also was susceptible to schism. To conservatives, then, families who split

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<sup>57</sup> B. de Kenenburgh, *La femme régénérateur*, (Paris: Dupont, 1899) 22-23; Bertillon, *Dépopulation*, 30-36.

<sup>58</sup> Georges Noblemaire, *Le complot contre la famille*, (Paris: Bloud, 1908) 42.

apart created both a literal and a metaphorical rift in French society, weakening the whole and leaving the nation susceptible to degeneration, depopulation and foreign interference.

Marriage was not merely an arrangement between individuals, conservatives claimed, but a contract with a future person; it was a way of ensuring that children would be given a stable and wholesome environment. A moral rather than simply a civil contract, marriage regulated human desire for the greater good of the species. One pundit claimed, “sexuality was not given to individuals for their individual ends, but for the ends of the species, for the conservation and perpetuity of the race.”<sup>59</sup> Here there were several protagonists at issue: The species, a universal designation that encompassed all humans, the race, a specifically European category of humanity and the nation, a particular rendering of the race. This universalistic language was not merely hyperbole, as the French population crisis was understood in Darwinist terms. In the broader sense, marital reproduction ensured the continuity of the species and the global primacy of Europeans. More importantly, however, the production of legitimate children was to contemporaries an important indicator of French national strength relative to the neighboring rival states.<sup>60</sup> Sexual satisfaction was seen therefore a subordinate purpose of marriage; the main function of marital intimacy was procreation.

The conservative understanding of what marriage was supposed to be was elucidated in a marriage manual called *Mariage, ses charmes et ses devoirs*. The author proposed a vision of marriage that defined a wife as a “priestess of the domestic

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<sup>59</sup>George Fonsegrive *Mariage et Union Libre*, in Grand-Carteret, *Trois formes* 351.

<sup>60</sup> Joshua Cole, *The Power of Large Numbers: Population, Politics, and Gender in Nineteenth-Century France*, (Ithaca: Cornell University Press, 2000) 181-211.

sanctuary” who “as much as her health would permit, and if heaven blessed [the] union, would acquit her duties as a mother in the largest sense of the word, and she will raise the children herself.”<sup>61</sup> The home was intended to be a haven where women presided over the domestic sphere, where children could be sheltered and raised. The wife in this excerpt was defined primarily by her ability and commitment to nurture children. Divorce threatened that ideal because the family home would be split and a mother’s responsibilities would of necessity shift. In traditional marriage, a mother was by definition also a wife or a widow. With the legalization of divorce, mothers were frequently separated permanently from their children, while those who retained custody might need to seek employment to help support their families. Given that motherhood was understood to be the natural role of women, divorce not only harmed the family, it robbed women of a social identity. As the divorced couple began to pursue new romantic relationships, parental attention would be increasingly drawn away from the children of the first marriage. From the conservative perspective, divorce solved the problem of animosity between husband and wife but it created a larger problem by destroying family stability.<sup>62</sup>

Divorce represented a sexual threat because it legitimized multiple partners, thereby realigning the family structure. Families would grow as parents remarried, placing the children of the first marriage at a disadvantage because they could not live with both mother and father, while the new children would. Divorce also complicated

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<sup>61</sup>Lucien Grellety, *Le Mariage, ses charmes et ses devoirs*, 2<sup>nd</sup> ed. (Mâcon: Protat, 1891) 138.

<sup>62</sup> Bonnie Smith, *Ladies of the Leisure Class: The Bourgeoises of Northern France in the Nineteenth Century*, (Princeton: Princeton University Press, 1981).

inheritance procedures, further damaging the prospects of children. Where once the patrimony would have been split evenly among siblings, the inheritance would be subdivided between children of different mothers. The dowry, intended in part as a safeguard for the welfare of children would be split between two families. Children of a first marriage would become, according to conservatives, “objects of discord between the spouse to whom they belong and the one to whom they are strangers, intruders for the children of the second marriage, children of another bed, orphans of a living father and mother would become for all an embarrassment and a reproach.”<sup>63</sup> Pronatalists argued that the possibility of divorce contributed to voluntary childlessness in marriage. The knowledge that their union could be temporary would deter spouses from procreating, while those spouses who did have children cheated their progeny by fracturing the home and destroying the security to which children were entitled.<sup>64</sup> Conservatives therefore maintained that divorce not only ended unhappy marriages, it also sabotaged functional unions and deterred couples from fulfilling the divinely ordained reproductive purpose of matrimony.

Religious conservatives were concerned over the threat divorce posed to the family but were still more agitated about the doctrinal implications of legalizing what Catholics understood to be adultery. For them marriage was not only a moral contract, it was a holy rite. Marriage by a priest was different from marriage by a civil authority because the couple made a covenant with God as much as they did with one another. The Catholic church therefore “assures the perpetuity of marriage in making it a sacrament, a

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<sup>63</sup> Noblemaire, 8.

<sup>64</sup> Louis Albanel, *Le crime dans la famille*, (Paris: Rueff, 1900) 22-30.

special grace which attaches itself to the reciprocal promises of the two spouses, which is destined to sustain them” and which would “raise itself against them to condemn them as sacrilege if they dare separate what God has united.”<sup>65</sup> From the perspective of the religious right, the reinstatement of divorce constituted the legalization of a serious sin.

Marriage was, from the conservative viewpoint, a moral contract that was binding regardless of the legal status of the partners. Divorce was objectionable not only because the parties separated, but also because they would then be legally at liberty to enter into a new union, which in the eyes of the Catholic Church was adulterous. Doctrinally a divorced individual was still married to their first spouse, so the second marriage was nothing better than an affair, rendering all children born to the second union illegitimate.<sup>66</sup> Conservatives compared divorce to polygamy, arguing that “polygamy merges several families into a single one; divorce disperses into different and perforce enemy houses the morally inseparable elements of one single family.”<sup>67</sup> The comparison to polygamy underscored the belief that alterations to the traditional indissoluble model of marriage were symptomatic of a return to barbarity. This degeneracy also resulted in the dispersion of the family unit throughout many households, endangering the welfare of children. The immorality of contracting an unsacralized second marriage consequently

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<sup>65</sup>Emile Beaussire, *Les principes du droit* (Paris: Alcan, 1888) 216.

<sup>66</sup>Paul Bourget dealt with the moral repercussions of Catholic remarriage in his popular novel *Un Divorce* (1904). In it Madame Darras, a Catholic divorcée remarries, while her son Lucien elects to cohabit with his girlfriend. The mother is horrified, but the son points out that in the eyes of God, both mother and son are equally culpable. A highly controversial work, *Un Divorce* provoked debate about natural law, the legitimacy of children of a second marriage and the morality of free union. See Paul Bourget, *A Divorce*, (New York: Scribner's, 1904); Joseph Grasset, *Morale scientifique et moral evangelique devant la sociologie* (Paris: Bloud, 1909) 30.

<sup>67</sup>Beaussire, 227.

jeopardized not only the souls of the individuals involved, but also the well being of society as a whole.

The conservative reaction to the legalization of divorce must be understood in part as a religious objection to the legitimization of a serious doctrinal infraction. Not all religious conservatives were Catholic, and many traditionalists were not religious at all. Other denominations recognized divorce as legitimate, but Catholicism was sufficiently entrenched in France to give Catholic reactionaries a significant place in the debate.<sup>68</sup> The popularity of divorce was understood by Catholics to be a manifestation of the weakening hold of church doctrine in the lives of individuals.<sup>69</sup> Secularization had been a major political goal of the government of the Third Republic, which had significantly weakened the power that religion had once wielded in society. The popularity of divorce in a nominally Catholic country demonstrated that individuals rejected the strictures of religious marriage and disregarded the regulating power of the church in pursuit of personal happiness.

### *A Dissoluble Civil Contract*

The governments of the Third Republic aggressively secularized French society, but for liberals the power of religion over society was still too strong.<sup>70</sup> They denied that

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<sup>68</sup> Gérard Cholvy, *La religion en France de la fin du XVIII<sup>e</sup> à nos jours*, (Paris: Hachette, 1991).

<sup>69</sup> Noblemaire, 37-38.

<sup>70</sup> For examples of secularizing reforms, see Patrick Cabanel, Jean-Dominique Durand, *Le grand exil des congregations religieuses françaises, 1901-1914*, (Paris: Cerf, 2005); Linda L. Clark, *Schooling the Daughters of Marianne: Textbooks and the Socialization of Girls in Modern French Primary Schools*, (Albany: State University of New York Press, 1984).



marriage was a moral contract and sneered at the mysticism of religious authorities that claimed to endow a simple civil contract with divine qualities. Rescinding the new divorce laws to conform to a moral code held by only part of the population was to them an act of state tyranny against the individual. One critic argued that the intervention of God should act as a constraint only on the interested parties within the religious domain. To impose religious strictures on society as a whole “would be iniquitous. It would be the most terrible tyranny that one could possibly imagine, a form of slavery and the most odious of all things.”<sup>71</sup> What made the potential return to indissoluble marriage deplorable to liberals was the possibility that one narrowly defined vision of morality would be authorized to govern everyone. Liberals did not see themselves as favoring immoral behavior or desiring to destroy marriage and families, but rather sought to obtain the greatest possible freedom for individuals in determining the nature of the marriage contract.

The first step for liberals toward making marriage a modern institution suitable for the twentieth century was to unpack what they characterized as the spiritual nonsense surrounding marriage. Promoting a secular view of marital commitment would serve to weaken the power of outmoded religious doctrines over a state that openly embraced secularism. Conservatives argued that marriage was by its very nature eternal and indissoluble. Liberals countered that that belief reflected an ingrained superstition that needed to be rooted out.<sup>72</sup> The divorce laws, however imperfect, at least took from

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<sup>71</sup> Naquet, *Loi du divorce*, 245.

<sup>72</sup> Henri Coulon et René de Chavagnes, *Mariage et le divorce de demain*, (1909) 282.

marriage “its irrational character of mystic consecration to return its true nature of a variable and revocable contract.”<sup>73</sup> Divorce helped to desacralize and make marriage rational by legally overriding the proscriptions imposed by religion. As long as divorce was legal, the state tacitly reinforced the position of liberals, that marriage was a simple contract and the power of the church was limited to the consciences of believers.

Although liberals supported divorce laws as a step toward demystification of religion, they saw the next logical step towards the modernization of marriage as being an increase in individual freedom. They found divorce to be too narrowly defined and the legal grounds for divorce to be too restrictive. Divorce so limited was “far, very far, from being the ideal remedy. It is a tiny portal opened on marriage, so narrow and so low that few can pass by it.”<sup>74</sup> Liberals therefore sought to expand the grounds for divorce to make it available to anyone who desired legal separation. Since the Revolution, marriage had been a civil contract in France, and “by consequence it ought to obey the general principles that govern all civil contracts.” The two contingencies in which a contract might be terminated were first “when the two authors of the contract agreed to dissolve it,” and second, when one party failed to hold the engagements and the injured party, “because of non-execution demanded termination” of the contract.<sup>75</sup> Although the divorce laws were a step in the right direction, they did not go far enough. Liberals

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<sup>73</sup> Anna Lemperière *Le Rôle de la femme*, (1908) in Grand-Carteret, *Trois formes*, 356.

<sup>74</sup> Coulon et Chavanges, *Mariage*, 282.

<sup>75</sup> Alfred Naquet, *Journal officiel de la chambre des députés*, (28 mai, 1879), quoted in Albert Millet, *Le Divorce, ce qu'il a été, ce qu'il doit être*, (Paris: Cotillon, 1880) 146.

therefore pushed for an expansion of the grounds of divorce to include mutual consent or even single-party suits for grounds other than adultery and abuse.

Consent-based divorce gave morality to marriage, according to liberals, because it eliminated the power of the state to constrain individuals to remain in unhappy marriages. Divorce, wrote one writer, “puts in perpetuity the key to their prison into the hands of the condemned: it would be wise to facilitate the use of it and . . . to pronounce it on the demand of only one of the parties.”<sup>76</sup> When individuals had a realistic option to be released from marital commitment at any time, marriage would again become a meaningful and moral institution. With the liberalization of divorce laws, couples would stay married by choice only, eliminating the hypocrisy of remaining in a union because the state offered no other recourse. The strictly limited grounds for divorce, argued liberals, were an impediment to the moral progress of society.

Like conservatives, liberals feared that the narrow grounds for divorce would give rise to abuse and scandal as couples, determined to be free, went out of their way to meet the criteria to file for divorce. Unlike those who advocated a return to traditional marriage, however, liberals felt that broadening the grounds for divorce would eliminate gratuitous spousal violence. If public morality were at risk, surely the remedy would be to shorten the process of divorce and remove the unedifying spectacle of public scandal that surrounded the process. The hypocrisy of marriage, according to liberals, came from forcing couples to choose between feigning happiness or dishonestly fabricating excuses to divorce. “Good households do not exist because of the strictness of the legal links of marriage and violent coercion which husbands can use,” wrote one author. Marital

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<sup>76</sup> Jourdain, 572-573.

dissolution was already possible to anyone truly determined to achieve it, so “allowing divorce by mutual consent would therefore be leaving things almost as they are, while simultaneously stopping a long, costly process from which public morale has nothing to gain.”<sup>77</sup> Amending the divorce laws to enable greater freedom, argued liberals, would simply bring the legal system in harmony with social reality, restoring human dignity. It would also eliminate the humiliating process of either publicly airing private misconduct or being forced to libel oneself to establish grounds for separation.<sup>78</sup>

### *Conclusion*

Divorce constituted a public admission that many marriages were failures. The legalization of marital dissolution reflected an acknowledgement by the state that no government or law could render an abusive or adulterous relationship sound and healthy. The number of divorces in the decades following the laws of 1884 provided fodder for both progressive groups and conservatives in the public debate over the disintegration of marriage, but the two groups interpreted the role of divorce in the crisis differently.

Informed in part by religious doctrine, conservatives interpreted divorce as the apocalypse of marriage. Temporary union was sacrilegious and constituted rejection of divine teachings on a national scale, reflecting serious moral decay and promoting personal immorality. For secular conservatives the implications of divorce were no less sinister. Families, the fundamental unit of society, were understood to be a microcosm of

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<sup>77</sup> M. Le Président Magnaud, “Enquête sur le mariage,” part 5, *La Plume: Revue Littéraire et artistique bi-mensuelle*, 291 (1901): 571.

<sup>78</sup> See also Paul and Victor Margueritte, “Enquête sur le mariage,” part 1, *La Plume: Revue Littéraire et artistique bi-mensuelle*, 288 (1901): 235-236.

France as a whole. If individual interests and desires were permitted to take precedence over the collective good on the familial level, then national identity and security would be similarly subjected to divisiveness. Furthermore, the dissolution of families contributed to the population crisis by robbing children of protection and providing an incentive for cautious partners to limit their offspring. Divorce was therefore a moral and national threat that heralded individualist triumph over the time-honored institutions of society.

For progressive groups, divorce was not a symptom of failure, but rather a solution to the hypocrisies of marriage. Prior to the legalization of divorce, liberals had postulated that the number of separations would drop off after an initial spike, perhaps in the hopes gaining conservative support. When it became apparent that divorce continued to be a desirable option, liberals construed the obvious popularity of divorce to be an indication of widespread support for the broadening of individual liberties. To them, marriage was an institutional failure not because couples sought divorces but because they had been imprisoned in unhappy relationships. Legal dissolution therefore made marriage moral and honest because those who remained wed did so by choice, presumably out of affection or at least mutual respect. If divorce on limited grounds had produced a marked improvement in marital happiness, then widening the door to divorce could only amplify connubial contentment. Only when individuals were free to leave at will would the choice to stay married have meaning and power.

## CHAPTER IV

### FREE UNION: AN ALTERNATIVE INSTITUTION

The Napoleonic Code came under harsh criticism for the rigid limitations it placed on couples entering marriage and those attempting to exit marriage. Critics of these limitations on marital relationships advocated reforms that allowed greater freedom for the individuals involved, while keeping the institution of marriage intact. In addition to eliminating the dowry and broadening the availability of divorce, *union libre*, or free union, provided a third avenue of marriage reform. Circumventing the traditional definition of marriage entirely and representing a profound threat to the power of the state, free union constituted an alternative to marriage, which privileged the freedom of the individual above all other considerations. Although the precise definition of free union was a matter of debate, in essence the term denoted a couple that consensually lived together in a sexual relationship that could be dissolved without fanfare the moment affection faded.

Free union provided a compelling point of debate for pundits all along the political spectrum. Conservatives tended to associate it with feminists, radicals and other vocal minorities. From the conservative perspective, free union was a symptom of how endangered traditional marriage truly was. It was simply the most morally offensive manifestation of a society in decline, which, if left unchecked, would lead to the

destruction of the nation. At the other end of the debate, left-leaning groups saw free union as the ultimate assertion of individual authority. Stripped of state interference, it was a romantic view that privileged individual happiness and denied the utility of a union without mutual affection. Both sides of the debate agreed that marriage had become an hypocrisy, but conservatives felt the moral contradiction lay in married couples committing adultery, while radicals claimed that to remain married to someone you did not love was equally hypocritical. Was it worse to have sex with someone who was not your wife, or have sex with your wife when you did not love her? Those who debated free union attempted to define the moral landscape to eliminate dissimulation in intimate relationships. Conservatives saw free union as a symptom of social decay, and sought to safeguard the nation by eradicating immorality, while more radical groups saw free union as the antidote to individual misery within marriage.

### *Public Morality*

Free union could be broadly defined as voluntary cohabitation, but how precisely contemporaries utilized the term bears closer examination. Conservatives tended to use free union as a catchall for any extra-marital sexual encounter, including cohabitation, premarital sex, adultery and prostitution. This broad interpretation of free union provided fodder for alarmists to paint an exceedingly bleak picture of marital fidelity and individual morality; “true matrimonial unity no longer exists in fact, it remains only in vain appearances: in reality, we are under the regime of free union, and, in waiting that these unions are clothed in a legal character, in fact, we live under the reign of

prostitution.” According to conservatives, marriage functioned as a façade for all manner of immoral behavior, rather than providing a legally and religiously legitimate outlet for sexual impulses.<sup>79</sup>

The first step toward decay in marriage, conservatives claimed, was the moral laxity of unmarried girls whose parents failed to teach them to value innocence. Marcel Prévost, a respected author and playwright, coined the term “demi-virgins” in an eponymous novel. The term referred to young women whose moral laxity had led them into over-familiarity with the opposite sex. Leading “an elegant life” and being “luxuriously entertained,” in a manner inappropriate for unmarried women were manifestations of this wantonness.<sup>80</sup> They inhabited an ambiguous middle ground between sheltered childhood and sexual initiation, which placed them in a position to know too much. “Who concerns himself with speaking of yesterday’s scandal in front of them? To what plays are they not taken? What novels have they not read?”<sup>81</sup> In some cases the partial initiation of demi-virgins included allowing physical intimacies up to the point of intercourse without crossing that threshold. What later generations would call petting, according Prévost diluted innocence and purity to such a degree that the term “virgin” was no longer applicable.<sup>82</sup>

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<sup>79</sup> J. de Val d’Or, *À la France, Aux Français - Les signes de la fin d’un monde: fin de la religion, fin de l’autorité, fin de la famille* (Cher: Saint Amand, 1893) 80.

<sup>80</sup> Stuart Oliver Henry, *Hours with famous Parisians*, (Chicago: Way and Williams, 1895) 154.

<sup>81</sup> Marcel Prévost, *Les demi-vierges* (Paris: Fayard, 1894) 79.

<sup>82</sup> Prévost, *Demi-vierges*; see also Guy de Maupassant, “The Thief,” *Short Stories of the Tragedy and Comedy of Life* vol. 3 (Akron: St. Dustan’s Society, 1903); Edmond Deshaumes, *Banqueroute de l’amour* (Paris: P-V. Stock, 1896) 56.



The equivocal position of demi-virgins, as neither innocent miss nor circumspect matron, reflected anxieties about changing gender roles in a modern society. The term was never applied to males, as virginity at the time of marriage was not considered a moral or social necessity for men.<sup>83</sup> Conservative anxiety about adulterated purity centered therefore entirely on the female body. Was it possible to readily identify a demi-virgin, or would a man be deceived until it was too late? One author argued that by attitude, language, what jokes they understood, even the look in their eye one could tell a demi-virgin from a true innocent.<sup>84</sup> According to Prévost, it was possible to be deceived and, worse still, impurity was contagious as a true virgin, surrounded by dissolute companions would in time come to think and act like them.<sup>85</sup>

In Prévost's novel, the main character, Maud, engages in heavy petting with her spendthrift suitor Julien while simultaneously becoming engaged to a wealthy provincial by the name of Maxime. She ensnares her fiancé by appearing chaste and aloof, all the while assuring Julien that as soon as she was married she would give herself entirely to him. That the author felt the premarital adventures of women posed a threat to Christian marriage is clear from the text; Maud fully intended to deceive her husband as soon as possible.<sup>86</sup> Prévost argued that a woman who failed to be chaste before marriage would

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<sup>83</sup> Men were expected to be sexually experienced at the time of marriage. Indeed, some claimed that the prospect of sex with a virgin bride would send a groom, tense with anticipation, multiple prostitutes or his mistress, living "his most sexually agitated life." Dr. Jaf and Saldo [Jean Fauconney], *Physiologie Secrète de l'Homme et de la Femme*, (Paris: E. Denans, 1908) 101.

<sup>84</sup> Georges Pellissier, *Nouveaux essais de littérature contemporaine* (Paris: Lecène, 1895) 48.

<sup>85</sup> Prévost, *Demi-vierges* 77.

<sup>86</sup> J. Novicow, *L'Affranchissement de la Femme* (Paris: Alcan, 1903) 114.

prove adulterous and morally dissolute after marriage. Premarital experience was, to many conservatives, symptomatic of broader moral decay and the deterioration of marriage as an institution.

Demi-virgins were cast as but the precursors to adulteresses, whose reckless violation of the sanctity of marriage threatened to tear asunder the fabric of French society. Female adultery was perceived as more threatening because of the possibility of ambiguous paternity, but male adultery was recognized to be a significant factor in marital unhappiness. Thus while adulteresses claimed a greater share of attention, philandering by both genders was thought to undermine social stability. How to explain the proliferation of adulterous liaisons? One interpretation denied the role of desire or affection between the lovers, arguing instead that women were tempted or forced into adultery for financial reasons. Upper class women took in their arms “millionaire Jews to acquit the debts which their fathers or husbands contracted,” while the wives and daughters of the bourgeoisie acquired “by this means a dowry which is appreciated much more than virginity.”<sup>87</sup> The poorest of women took lovers as a means of acquiring bread. By this argument, infidelity was synonymous with prostitution and attraction played no role in adultery. It is interesting to note parallels to liberal arguments about dowry practices, though contemporaries did not acknowledge the commonality of argument. While conservatives favored a traditional model of marriage, they also acknowledged that the greed engendered by keeping up appearances and seeking dowries contributed to moral decline.

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<sup>87</sup> Val d’Or, *À la France, Aux Français*, 81. Note the reference to anti-Semitic sentiment, which informed the author’s understanding of social degeneration.

The most important aspect of the conservative argument was the firm conviction that France was significantly endangered by the sexual license of individuals. Far from opening the door to a progressive, modern era of intimate relationships, free union by any definition was viewed as a catastrophic end to social stability. The root of the problem lay in the fact that free union privileged individual autonomy at the expense of the public good. Conservatives likened the strength of the family unit to the overall power of France. In their view, marital dissatisfaction as manifested by the exponentially increasing number of divorces was evidence that the social fabric of France was weakening. Additionally, adulterous affairs contributed to the termination of marriages and therefore posed a danger to the welfare of children, the future of France. More abstractly, conservatives perceived widespread adultery to be a confirmation that the French lacked moral fiber. Conservatives considered adultery to be dangerous because it placed short-term gratification before the state interests of social continuity, the welfare of children and national morality, thereby undermining the long-term security of French society.

Although free union existed as a reality, adultery and cohabitation were neither sanctioned by the state nor protected by law. Partisans of free union argued that unmarried couples ought to enjoy legal rights as well as freedom from social censure. The possibility that licentious behavior would become legally and morally sanctioned sent conservatives into an uproar, due to the fact that they saw the shift as a leftist plot, possibly with international ties, to undermine the state. Socialists and feminists both represented movements with multi-national support that advocated greater freedom for

individuals, especially for women. Plays like Ibsen's *A Doll's House*, the writings of Bebel in Germany and novels of the feminist left in England were seductive conduits for liberal messages. As French audiences applauded Nora leaving her husband, or devoured the pro-free union message of *A Yellow Aster*, they accepted a subversive message that undermined traditional marriage and glorified free union.<sup>88</sup> The multi-national feminist and socialist movements made the activism of those groups in France seem all the more threatening.

Maurice Maindron, a prominent natural historian, blamed the socialist program that “tries to kill the family materially after having ruined it morally.” Socialists were thought to be consciously attacking the family as the only group able to resist the future socialist state. Although socialist plotting was blamed for the weakening of the family, the cowardly willingness of the French to assist in the destruction of familial institutions contributed to national decay. Maindron claimed, “Peoples always have the institutions which they merit, especially when they tend toward individual happiness as the ultimate goal. The well being of individuals has nothing to do with the greatness of the nation. It is even, most of the time, absolutely contrary to it.”<sup>89</sup> Marriage, conservatives argued, provided the necessary link between the state and the individual and provided an avenue for the state to guarantee rights and contribute to general prosperity. Individuals who

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<sup>88</sup> Noblesse, 45-47. Some authors also perceived flirtatiousness, the precursor to demi-virginity to be an English import and emphasized negative effects of foreign mores on the behavior of French women. See Harry Quilter, *What's What: A guide for today to life as it is and things as they are* (Sonnenschein, 1902) 494-495; Stuart Oliver Henry, *Hours with famous Parisians*, (Chicago: Way and Williams, 1895) 154; Mary Louise Roberts, *Disruptive Acts: The New Woman in Fin-de-Siècle France*, (Chicago: University of Chicago Press, 2002): 24-26.

<sup>89</sup> Maurice Maindron, “Enquête sur le mariage,” part 1, *La Plume: Revue Littéraire et artistique bi-mensuelle*, 288 (1901): 237.

placed gratification before maintenance of institutions therefore undermined the power of the state to promote general satisfaction.

Conservatives, agreeing with Maindron that individual pleasure seeking was contrary to the long-term interests of France, attempted to promote a sense of duty. Most acknowledged that free union was pleasurable, but argued that taking pleasure while neglecting duty was consummately selfish. Mme. Henri Gréville, responding to a magazine survey about the state of marriage in France wrote, "Marriage as it must be, where each must try hard to encourage it, is the cornerstone of the social edifice. Free union would be the ruin of it. The responsibility of the father vis-à-vis the child, the respect of the husband for the wife, all that is respectable and sacred would crumble in the day where free union governs the world"<sup>90</sup> Where individual satisfaction took precedence, mutual respect would falter. Without legal obligation, fathers would neglect their children and have no respect for their wives. Children could not honor parents whose behavior was morally reprehensible, and parents would be ill suited to teach their children, lacking the power of example. Free union negated the family not only by dissolving legal ties but also by removing the possibility of mutual respect.

From the conservative perspective, the legitimization of free union needed to be fought aggressively. While no law prohibited cohabitation, social ostracism and lack of legal recognition did limit the spread of free union. Conservatives therefore engaged actively in trying to prevent free union from gaining legal recognition and legitimacy through changes to the Civil Code. They also emphasized the immorality of engaging in

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<sup>90</sup> Mme. Henri Greville, "Enquête sur le mariage," part 4, *La Plume: Revue Littéraire et artistique bimensuelle*, 292 (1901): 445-456.

extramarital sex in the hopes that social pressure would contain the spread of debauchery. Partisans of traditional marriage upheld the power of the Code because they believed that without strictly enforced legal guidance individuals tended toward moral anarchy. To conservatives, the French family was a necessary bulwark against both immorality that threatened to corrupt from within and the machinations of feminists, socialists and radicals who had suspicious international ties.

### *The Triumph of Individual Freedom*

Proponents of free union defined the term more narrowly than conservatives, and saw it as an ideal for the future rather than the vice of the present. Free union was not simply adultery or premarital sex; it was ideally a system entirely separate from marriage as it was conventionally defined. Couples would be able to voluntarily unite and separate without state interference or moral condemnation. Adultery was not free union. It was, however, a step toward greater sexual freedom, which free-thinking groups perceived to be evidence that individuals naturally preferred free union to the hypocrisy of being intimate with an unloved spouse.

The philosophy behind free union was based on the belief that the greatest hypocrisy of modern marriage was the sexual partnership of a couple that did not esteem one another. Many couples entered marriage without mutual affection, but even those who were in love when wedded could not rationally promise they would always feel the same. This emotional inconstancy led one author to note, “who loves today, cannot answer for loving tomorrow, and union without love is rape, on one side, and ignominy

on the other.”<sup>91</sup> Since constancy of affection could not be guaranteed, progressive thinkers argued that continuous right to impose on a disaffected partner ought not to be condoned.

Far from legitimizing immorality of the worst sort, as conservatives accused, advocates of free union felt they were paving ground for a higher morality. Rejecting the traditional sexual standards rooted in Christian doctrine, they argued that marital relations without emotional attachment, “degrades the man and the woman by making them practice sexual union only physically, without the participation of the most noble part of their being: the soul.”<sup>92</sup> The purpose of free union was to end the long-standing separation between love and sex, thereby establishing a truly decent system.

Traditional marriage, argued proponents of free union, institutionalized sex without affection, thereby promoting adultery by driving dissatisfied spouses to seek love outside the home. Adultery, liberals claimed, was immoral not because of the illicit sexual behavior involved but because it necessitated deception and dishonesty. If free union replaced marriage, adultery would not be possible and dissimulation would be unnecessary, as “another moralizing result of free union would be to abolish lies, betrayals and adultery.”<sup>93</sup> Marriage as an institution promoted loveless sex and mutual deception. Free union, because it could be dissolved the moment one party no longer loved the other, would be free of both of these shameful results. The only fault with free

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<sup>91</sup> Eugénie Potonié-Pierre, *Almanach de la Question sociale pour 1898*, in John Grand-Carteret, ed., *Les trois formes de l'Union sexuelle à travers les âges: Mariage, Collage, Chinnerie*, (Paris: Albert Méricant, 1911) 275.

<sup>92</sup> J. Novicow, *Affranchissement*, 112.

<sup>93</sup> J. Novicow, *Affranchissement*, 113.

union would be “if it were contracted for considerations other than love or if it continued to exist when love had ceased to be.”<sup>94</sup> In other words, free union became immoral only when it came to resemble marriage as it was generally practiced in France at the time.

Supporters of free union argued that the formality of a marriage ceremony was powerless to enforce constancy, as the prevalence of adultery attested. Conservatives advocated a return to indissoluble marriage as the best means of strengthening family unity and promoting general well being. Progressive thinkers argued that traditional marriage had long failed to achieve those aims and that logically the state neither could nor should stop partners from cheating on one another. The word fidelity “ought to disappear from law as immoral and illicit, as the law cannot make the body of each spouse the property of the other.”<sup>95</sup> Marriage vows were portrayed as a futile attempt by the church and the state to exercise authority where individual preferences would inevitably win out.

The marriage ceremony was perceived to be a relic of a more credulous or craven age. The rigorous anti-clericalism of the Third Republic had resulted in the marginalization of religious authorities, whose functions were increasingly filled by state representatives. Whatever power a priest may have exercised over the believing in times past, an indifferent functionary could hardly command comparable respect. As a result, the marriage ceremony lacked meaning and seemed superfluous; “The religious man could believe that the consecration of marriage by the priest, in the name of divinity,

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<sup>94</sup> Eugénie Potonié-Pierre, 275.

<sup>95</sup> Lucien le Foyer, “Esquisse d’un Code nouveau du mariage,” *Revue de Morale Sociale* 1901-1902 in Grand-Carteret ed., *Trois formes*, 282.



imprints it with indissolubility. The modern man cannot see as consecration the inscription of his marriage on the registers by a vague municipal officer.”<sup>96</sup> The marriage ceremony, a practice tied to Catholicism and the old *régime*, was perceived to be an antedated ritual that had outlived its usefulness. The attempts of the republican state to borrow ecclesiastical authority only served to undermine state credibility and the institution of marriage.

Proponents of free union likened traditional marriage to the oppressions of the *ancien régime*, thereby casting themselves as the true representatives of republican freedom. Dismissing marriage as shackles and a sham, Urbain Gohier wrote, “no human being can abdicate his personality, nor alienate his liberty for an unlimited period of time. No human being can claim lasting rights over another.”<sup>97</sup> Marriage was, to Gohier, a tyranny that changed a voluntary link into a permanent and inescapable state. It empowered one spouse to demand fidelity of the other, thereby enchaining the couple to one another regardless of inclination. If the Third Republic was meant to be a modern state and decisively break with the oppressions of the past, then new institutions were necessary to empower individuals to act according to their own wills.

Supporters of free union framed their argument around the logic that that, as far as traditional marriage was concerned, the couple’s mutual devotion was what held a family together and generated connubial happiness. That being the case, the marriage ceremony was superfluous. A couple could express mutual devotion without involving legal functionaries and their union would be as monogamous and moral as a marriage

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<sup>96</sup> Gohier, 302.

<sup>97</sup> Gohier, 302.

sanctioned by law. Free union had the added advantage of freeing the parties involved by enabling the alliance to be dissolved when individual inclination dictated. Furthermore, free union was to be a modern institution that decisively ruptured ties with France's authoritarian past.

The role of women in society was central to the debate about free union. Just as conservatives placed women's bodies at the heart of their arguments about immorality and loose behavior, liberals likewise focused their arguments on how free union would impact women. For the most part, feminists argued that women only stood to gain by obtaining greater freedom in relationships, though some cautioned that sexual freedom would ultimately lead to degradation.

Men were sidelined from the debate in large measure because for them, free union was already socially acceptable. They did not suffer for fathering illegitimate children nor was there social stigma attached to keeping a mistress.<sup>98</sup> Women, by contrast, could pay a high price for being caught in adultery or for bearing a baby out of wedlock. A deceived husband could have his wife sent to prison for up to two years, but the reverse was not true. Although there were no legal repercussions for becoming pregnant outside marriage, the inadequate assistance provided by the state, combined with the weight of public censure effectively punished only unwed mothers, while fathers were not held responsible.<sup>99</sup>

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<sup>98</sup> Women were forbidden to sue for paternity, effectively insulating men from liability in potentially embarrassing extra-marital affairs. Cachard, *French Civil Code*, §340, 88.

<sup>99</sup> See Eugène Briex, "Maternity," trans. Mrs. Bernard Shaw in *Three Plays by Briex, Member of the French Academy*. 4<sup>th</sup> ed. (1912); Rachel Fuchs, *Poor and Pregnant in Paris*, (New Brunswick, Rutgers University Press, 1992); Henry Cachard France, *The French Civil Code: With the Various Amendments Thereto, as in Force on March 15, 1895*, §308 (London: Stevens and Sons, 1895) 80.

Feminists and liberals hoped to eradicate the burden of social pressure that rested solely on women by making free union widely acceptable. When women were free to live alone or with a man, to change liaisons according to the dictates of their hearts, they would do “exactly what men do in our day.”<sup>100</sup> Free union was one of the important means of achieving gender equality because it would eliminate the debasing aspects of marriage. Freed from the demeaning barter of dowry negotiations or the humiliation of spinsterhood, women could select partners freely. The hypocrisy of marriage would disappear because women would no longer have to submit to a sexual relationship with an unloved spouse for security.

Free union, argued liberals, would grant greater sexual license but would not result in licentiousness. Increased liberty would not turn women into insatiable hedonists, but would simply give women the opportunity to satisfy their pre-existing inclinations. One author wrote “sensual women would be able to obey their nature without hiding . . .but it doesn’t follow that morals would be worse, because the number of sensual women will not be greater in the time of liberty than in the period of servitude.”<sup>101</sup> Free union was more than just libertinage because it presupposed that the two partners shared mutual affection as well as attraction. Debauchery was satisfaction of sexual appetites without a spiritual connection, but the purpose of free union was to eradicate that hypocrisy. Therefore, free union would not create lewd behavior or promote promiscuity, but it would allow sensual women to express their desires with as much social legitimacy as reticent women.

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<sup>100</sup> J. Novicow, *Affranchissement*, 112.

<sup>101</sup> J. Novicow, *Affranchissement*, 170.

One benefit to free union touted by the far left was that women would not only gain equality but would become objects of reverence. When women enjoyed the same sexual freedom as men, the latter would be forced to exert themselves to attract partners. Free union, therefore, would not merely grant women the same freedoms that men enjoyed; rather, some argued, it would place women on a pedestal as men vied for favors more easily withheld. Paul Lafargue, an enthusiastic communist, claimed that a Darwinian form of natural selection would follow, as men “would be obliged to strut around like peacocks and exhibit all their physical and intellectual qualities to win lovers.”<sup>102</sup> In a communist society women could enjoy the privilege of flitting from man to man, because only under communism would women be honored as mothers above all while the collective cared for the children. This vision was counterproductive from the feminist point of view, because it perpetuated the ideal of women as mothers without fundamentally changing their social position. Lafargue’s position represented an extreme and likely unrealistic model for women in society, but it did illustrate that women were intended to be the beneficiaries of the free union.

Novelists created competing visions of how free union would play out in reality. In Marcelle Tinayre’s *La Rebelle*, the heroine Josanne unabashedly cheats on her ill husband, but finds her lover Maurice to be immature and inconstant. Her husband dies, and she eventually finds love with Noël, a feminist writer with whom she can share both love and her political views. Throughout, Josanne refuses to evaluate her actions against and externally imposed moral code, recognizing instead that each choice she made was

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<sup>102</sup> Paul Lafargue, “Enquête sur le mariage,” part 4, *La Plume: Revue Littéraire et artistique bi-mensuelle*, 292 (1901): 444.

good to her. In Tinayre's vision, a relationship of love outside marriage could be fulfilling for a modern woman if she found a man who shared her views, loved and respected her.<sup>103</sup>

Camille Pert, another widely read novelist, came to the opposite conclusion about the feasibility of free union in her novel *Leur Égale*. Thérèse, the protagonist, is the successful owner of an inherited publishing firm, giving her financial autonomy that she is unwilling to risk by getting married. She falls passionately in love with her cousin Adrien and for a time the two enjoy a perfectly companionate relationship with fluid gender roles as he outfits the kitchen of their flat while she works at her firm. Thérèse saves Adrien from his debts by giving him work at her company but he is humiliated and rejects her in favor of Germaine, a woman who more closely approximates the feminine ideal of the time. Germaine is a "puerile, false doll" who does not threaten Adrien's masculine sense of superiority and she is happy to trade subordination for security. Thérèse, disillusioned, returns to a life of celibacy and edits a new feminist journal.<sup>104</sup>

These two competing visions of free union illustrate how uncertain contemporaries were about how free union would play out in reality. Both authors agreed that the ideal relationship would be composed of intellectual equals who shared both passion and friendship. Tinayre and Pert both assumed that such a relationship was impossible within the sexist strictures of marriage. However, while Tinayre was sanguine about the possibility of men overcoming the prejudices of society, Pert denied that a union of equals was possible over the long term. Although a man might enjoy the

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<sup>103</sup> Marcelle Tinayre, *La Rebelle*, (Paris: Clamann-Lévy, 1906).

<sup>104</sup> Camille Pert, *Leur égale*, (Paris: H. Simonis Empis, 1899) in Holmes, *Romance*, 180.

novelty of cohabitating with a friend, his masculine pride would lead him to forsake his lover for the conventional power structure of marriage. While many idealists claimed that free union would give women more freedom, Pert and others posited that it would in reality simply provide another means for women to be forsaken and rejected. They believed that society of Belle-Époque France was not ready to embrace free union because gender-based discrimination was too firmly ingrained.

Free union was in many respects a utopian vision, which made it both broadly appealing and problematic. In theory free union would liberate couples and women in particular from domination by a restrictive legal system, which would pave the way for gender equality and a return to nature. Left-wing groups seized on free union as a means of promoting their particular ideology, whether it be feminism, socialism, communism or a combination thereof. Most agreed that free union should replace traditional marriage, but how that end could be achieved was more complicated.

### *Defining an Institution*

Progressive thinkers, to varying degrees, conceived of free union as an institution. Conservatives, who defined free union as all extra-marital sexual relations, claimed that free union already existed. By contrast, advocates of sexual liberation tended to place free union in the future as an ideal towards which French society needed to work. While some individuals might already enjoy free union, in order for most people to experience that liberation social mores and the legal system needed to undergo profound shifts.

The Civil Code rigidly defined the single legitimate form of union as traditional marriage, so some reformers proposed new codes to replace outdated laws. Paul Magnaud, a justice known for his clemency and feminist positions, proposed that free union become a legitimate institution that would exist parallel to traditional marriage. He wrote, "I strongly desire that, alongside of the institution of marriage such as we have it today be organized a state of free union recognized by a simple declaration before the officer of the civil state, giving birth to ordinary family rights and susceptible to cessation by consensual, and even unilateral declaration, before the officer of the civil state."<sup>105</sup> This simple solution involved the least alteration to the existing code. By declaring themselves before a civil functionary, partners would gain the cachet of legitimacy but could avoid dowry negotiations or the necessity of divorce. Free union would certainly be the less expensive option, as the costs of a notary or a priest could be avoided and the price of a divorce rendered irrelevant. The public registry was a compromise solution that would enable the state to monitor relationships to a small degree without the intrusiveness of imposing one of the three systems of marriage.

Most liberals, however, did not feel Président Magnaud's reforms went far enough. Doctor Toulouse, a respondent to a marriage survey, pointed out that Magnaud's system would create two matrimonial castes formed by the two sorts of union. Traditional marriage "would become the marriage of the rich" while free union would be "the marriage of the poor." He proposed that there be a single system of marriage called "the contract of union." This system would make marriage contracts similar to business

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<sup>105</sup> M. Le Président Magnaud, "Enquête sur le mariage," part 5, *La Plume: Revue Littéraire et artistique bi-mensuelle*, 291 (1901): 574.

contracts, with the partners free to be as exacting or as lenient as they chose. Contract of union would provide a happy medium between “legal union, which is too strict and free union, which is too lax and is without guarantees.”<sup>106</sup> Although Doctor Toulouse clearly argued that the strictures on marriage ought to be relaxed, his arrangement limited liberty more than most advocates of free union would have desired. His proposition in reality did not clear the way for free union but simply redefined the conditions of union more liberally.

A third possible system, proposed by Lucien le Foyer, eliminated traditional marriage entirely and addressed the significant issue of how to maintain children born of free unions. One of the significant flaws with many visions of a free marriage society was that they failed to explain how and who would support children without the legal structure traditional marriage provided. Le Foyer attempted to address this issue by proposing a tripartite arrangement consisting of union of love, union of childbirth and union of parenthood. He argued that, “the obligation to nourish, support and raise children comes from the birth of a child, and not from the existence of marriage. We need a code of spouses. We need a code of parents.”<sup>107</sup> A couple in a union of love could conceive a child to whom they would be obligated forever after by a union of parenthood. Though he did not explicitly define the obligations of a union of parenthood, the implication was that the parents would be responsible for raising and nourishing their children as if they had been conventionally married. However, the couple was not

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<sup>106</sup> Dr. Toulouse, “Enquête sur le projet de loi dû à l’initiative du président Magnaud,” *Gil Blas* (1905) in Grand-Carteret, *Trois formes*, 311.

<sup>107</sup> Le Foyer, 282-283.



obligated to continue to cohabitate and would be free to end their union of love at any time. He claimed that “the carnal link used to create a struggle between spouse; its rupture will make the reconciliation of parents.”<sup>108</sup> The tripartite system was also an attempt to find a middle ground between conventional marriage, which offered security for children, and free union, which provided liberty to individuals.

### *Conclusion*

Many advocates for free union saw it as a replacement for traditional marriage, but they did not envision it as an institution to be regulated by the state. Indeed for many, regulation destroyed the purpose for free union entirely. Octave Uzanne, an artist, warned “in the day that free union should be admissible, it would become almost as perilous and fastidious as actual marriage.”<sup>109</sup> The entire purpose of free union, according the most liberal, was to brook no outside interference in private matters and to live beyond the reach of matrimonial laws. In order for individual happiness to take precedence in society, state interference in relationships had to be completely eliminated. Yet even the most liberal had to acknowledge that the individual happiness of adults should not take precedence over the welfare of children.

For those who wanted free union untrammelled by formalities or legalities, the simplest solution was to remove the social stigma attached to illegitimate children. One survey correspondent proposed that all children be given the last name of the mother so

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<sup>108</sup> Le Foyer, 282.

<sup>109</sup> Octave Uzanne, “Enquête sur le mariage,” part 3, *La Plume: Revue Littéraire et artistique bi-mensuelle*, 289 (1901): 301.

that it would be impossible to differentiate between children whose fathers had acknowledged them and those who had not.<sup>110</sup> Others argued that the last name would have to be abolished entirely as part of an effort to overcome centuries-old sexual jealousy on the part of fathers, so that children could be raised collectively.<sup>111</sup> The social equality and individual freedom that liberals sought through free union was also intended to extend to the youngest members of society. Children, far from being harmed by being born to unwed parents, would benefit from a social order that removed stigmatization based on birth.

Free union was the most radical solution to the crisis of marriage because its supporters hoped to marginalize or eliminate marriage as an institution. To conservatives, the liberal camp seemed like a monolithic group who advocated decadence and debauchery to a degree that would culminate in the destruction of French society. From the conservative perspective, marriage needed to be salvaged and defended from the encroachment of immoral individual selfishness. Free union, however, was not a concrete concept with a clear definition. While many radical groups vocally supported the abolition of marriage, what precisely constituted free union was a matter of open debate. One of the greatest flaws with free union was that it became thoroughly entwined with utopian visions of the future, such that there were few realistic plans for how society would come to accept and implement it. As a consequence, conservatives were

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<sup>110</sup> Octave Mirabeau, "Enquête sur le projet de loi dû a l'initiative du président Magnaud," *Gil Blas* (16 Octobre 1905) in Grand-Carteret, *Trois formes*, 309.

<sup>111</sup> L. Tillier, *Le Mariage; sa genèse, son evolution* (Paris: Société d'Éditions Scientifiques, 1898) 286; see also Urbain Gohier, "Enquête sur le mariage," part 3, *La Plume: Revue Littéraire et artistique bi-mensuelle*, 289 (1901): 302.

considerably more united in their defense of traditional marriage than liberals were in attacking it.

Supporters of free union advocated above all things the happiness of individuals in their relationships with one another. Individualism, by its very nature, is not something that can be effectively united into a social movement. While individuals chose to engage in free union, there was no effective means to encourage society as a whole to reject long-standing conventions in favor of personal interests. Furthermore, while feminists argued that free union would be an integral part of achieving equality, in reality gender biases remained too firmly entrenched for the existence of equal partnerships to be widespread.

Despite the frantic furor over free marriage, it seemed that in general conventional marriage continued to be the relationship norm. What made the debate about free union significant was that both sides sincerely felt that dramatic institutional change was both probable and imminent. The boundaries of sexual relationships became grounds to contest the power of individual choice against the strength of long-standing tradition. The fact that conservatives took the threat seriously was an indication that they perceived French institutions to be weak and the state to be powerless to stop the degeneration of society. It was a testament to the strength of the individualist argument that liberals and radicals believed it was possible to destroy a fundamental institution and rebuild a society based on individual interests.

## CHAPTER V

### CONCLUSION

The idea of companionate marriage proposed by the *philosophes* of the Enlightenment and enthusiastically adopted by the revolutionaries of the 1790s had become firmly established by the time of the marriage crisis at the end of the nineteenth century. The experiments of the revolutionary period with legalizing divorce and granting greater equality between spouses failed to bring the happiness idealists had proposed would ensue. Although the Civil Code that governed France for most of the 19<sup>th</sup> century did little to promote companionate marriage, it is clear that people's thinking had changed considerably by the end of the period. That both conservative and more radical thinkers during the marriage crisis based their arguments on the assumption that marriages should be based on affection and mutual respect is a telling witness of the long-term effects of the idealism of the preceding century.

Conservative pundits derived many of their arguments from the belief that the integrity of the nation was dependent on the virtue of its citizens. The parallels between this point of view and the attitude of participants in the French Revolution are significant. To right-wing activists, the failure of marriage was due to the immorality of individual. The dowry, to them, was a weak institution primarily because the avarice of the parties involved rendered marriage contracts little more than property settlements without regard to sentiment or compatibility. The prevalence of divorce was a sign of selfishness and a

disregard for the needs of children. Free union, in the eyes of conservatives, was the ultimate sign of degeneracy. The proposed authorization of gross licentiousness was seen as proof that fidelity, chastity and honorable paternity were no longer the primary values of the French people. Conservatives saw these three points as compelling evidence that France as a nation was weakening. According to them, the family was a microcosm of the nation, and if the unvirtuous behavior of individuals destroyed the family, by extension it undermined the strength of France as a whole. While the crisis of marriage never erupted into internecine warfare like the revolutionary period, the link between personal virtue and national security remained important.

Even as conservatives touted the importance of preserving the nation, more left-leaning groups championed the rights of the individual, a concept that also had ties to the Enlightenment and the Revolution. Progressive thinkers saw marriage as a contract between individuals that should be freely entered into and freely dissolved. They opposed the dowry because it limited the choice of partners and gave families and the court excessive power over the marital relationship. Indissoluble marriage necessitated the abdication of personal freedom for an indefinite period of time without hope of recourse. To liberal critics, divorce was therefore contrary to the rights of individuals to happiness. Rationally, no person could promise to forever maintain a particular emotional state, and so to force a couple who no longer loved one another to stay married was also contrary to the principles of reason. Progressive commentators saw Free Union as the ultimate form of modern marriage. To them it was the institution of the future; the

perfect means of ensuring that individuals enjoyed both liberty and equality in romantic relationships as never before.

In some ways the crisis of marriage was a forward-thinking discussion about liberalizing an inflexible institution. The proposed abolition of the dowry, the legalization of divorce and the possibility of free union all represented a decisive break with tradition. In language and ideology, however, the debate over marriage looked backward to the Enlightenment and the Revolution.

The marriage debate had been carried out for the most part in newspapers and magazines, where well known authors, politicians and activists could hold forth to a wide audience and attempt to sway public opinion toward one side of the debate or the other. The Caillaux affair mesmerized the French still more than the debate over marriage, and reporters exhaustively covered the trial in order to pander to the readers.

The trial was appealing in part because it provided a shocking scandal about a public figure, but it also put on trial the very issues that had been so hotly contested as part of the marriage debate. At the core of the case was the premarital adulterous relationship Joseph and Henriette had shared. The incriminating letters were the primary motive for Henriette to committed her crime, while the possible revelation of those letters was one of the chief reasons the public found the case so fascinating. The case served to illustrate in stark terms the sexual hypocrisy of marriage. Joseph had married not one but two of his adulterous mistresses. To conservatives, the sexual immorality of the parties concerned provided an explanation for the tragic murder of Gaston Calmette, and a striking illustration of the wide-reaching effects of personal immorality. Radical groups,

especially feminists, countered that it was not sexual immorality and degeneracy which pushed Madame Caillaux to crime, but a repressive system wherein were supposed to enjoy innate moral superiority. It was the false teaching that women were morally above men that led Madame Caillaux to believe she could exact justice against a man who impugned her character. The tension between advocates of sexual liberation and prophets of national degeneration that had manifested itself in debate over the crisis of marriage erupted again in the courtroom drama over the Caillaux affair.

Divorce was intimately related to adultery in the case of Joseph Caillaux and his wives. He had provided a motive for Berthe, his first wife, to dissolve her first marriage. Henriette in turn gave Joseph a reason to divorce Berthe. Conservatives entwined adultery and divorce as two sides of the same coin; both provided clear evidence that blatant disregard for the sanctity of family could only end in tragedy. Had Joseph Caillaux married an available woman and stayed married, the entire scandal and fatal calamity would have been averted. For them, the subject of the trial became to a great degree the secular society and immoral reforms inflicted by the republic on France.<sup>112</sup>

Joseph Caillaux defended his choice to divorce Berthe in favor of Henriette by referring to the dowry and bourgeois status of the latter. As he arrogantly reminded the court, Berthe had come to her second marriage without a penny and left with 18,000 francs per annum plus investments. Henriette, by contrast, had brought a sizeable dowry to her husband and had always acted as a biddable domestic wife, unlike her predecessor. As the quintessential bourgeoisie, complete with dowry, she was everything the mondaine social climbing Berthe was not. By establishing how Henriette filled to exactness the

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<sup>112</sup> Berenson, 149.

qualifications of a bourgeois wife, her supporters hoped to convince the jury of her feminine fragility and susceptibility to fits of passion, thereby securing her acquittal. The dowry was presented as evidence that Henriette entered her marriage in good faith as a proper *bourgeoise* who was soft, retiring, and held none of the disturbing masculine assertiveness of Berthe.<sup>113</sup>

The trial of Madame Caillaux distilled the major issues of the crisis of marriage and put them on trial. The verdict would not, of course, produce or undo any of the much-discussed legislation of the marriage debate. The trial did force the court to rule on whether or not personal immorality would lead to destruction, as conservatives claimed. Henriette was acquitted, to mingled cries of fury and relief from the crowd surrounding the building. It seemed for a moment as though proponents of divorce and sexual liberation had struck a blow against traditionalists.

On the day of the acquittal, July 28, 1914, Austria declared war on Serbia and within four days French mobilization began. The Caillaux affair need not have been the capstone of the debate over marriage, but the national crisis of war quickly overwhelmed the perceived institutional crisis. The *Union Sacrée* made patriotism and the nation the preeminent concern for all but the most vehement liberals, while the failure of marriage seemed an irrelevant question with millions of couples separated by the exigencies of conflict.

The First World War definitively put an end to the marriage crisis by providing a more immediate catastrophe on which the French of necessity focused their attention. This study does not therefore extend past 1914, but it would be interesting to pursue the

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<sup>113</sup> Berenson, 148.



course of free union as a historical phenomenon over the twentieth century. The once radical theory of widespread cohabitation has now in large measure become a reality, a remarkable change worthy of in-depth study. A cultural study of the demise of the dowry would likewise provide a novel approach to the effects of the First World War on French society. While the dowry remains part of the Civil Code to this day, it clearly fell into disuse during and after the war. What role the crisis of marriage played in hastening the demise of that longstanding institution would be an interesting question.

The crisis of marriage provides a fascinating glimpse into how the French of the Belle Époque envisioned the ideal domestic situation. The surveys and novels written in response to this crisis provide dramatic evidence of the political polarization of intellectuals, politicians and activists over what constituted a family and what role the family played in society. Long overlooked, this heated debate enriches our understanding of the Belle Époque and provides a parallel drama to the other crises of the period.

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